The Incorporated Accountants' Journal.

THE OFFICIAL ORGAN OF

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Professional Notes.

This issue marks the commencement of the 37th volume of *The Incorporated Accountants' Journal.* The first number appeared in the year 1889, and, judging from the support accorded by subscribers and advertisers, we can make a modest claim that the official organ of the Society of Incorporated Accountants and Auditors has fulfilled the purpose of its publication. Improvements are being introduced into the new volume both in regard to the arrangement of the matter and the setting of the type which we hope will increase its usefulness and enhance its popularity. A special feature of this number is an article by Sir Josiah Stamp, G.B.E., D.Sc., entitled "Quo Vadis—1965?" While the writer of the article, conscious of his readers' thoughts reverting to the years which have passed since 1885, does not depreciate the retrospective habit, he desires to ensure a "forward looking" attitude of mind rather than a reluctant relinquishing of past conceptions, on the part of all writers, lecturers and governing councils in the profession.

In connection with the approaching 40th anniversary of the Society's foundation and incorporation a dinner will be held in the Mansion House, London, by the kind permission of the Lord Mayor, on Tuesday, October 27th, at 7.30 p.m., when the Society will entertain some distinguished guests, and it is hoped that the attendance of members will not fall short of the number present at the remarkable gathering held in the same building in the year 1922.

The Departmental Committee appointed by the Board of Trade to consider and report what amendments are desirable in the Companies Acts, 1908 to 1917, has already held 25 sittings under the chairmanship of Mr. Wilfrid Greene, K.C., and has still a considerable amount of work before it. We are able in this issue to present the evidence given before the Committee by Mr. G. S. Pitt, F.S.A.A., President of the Society of Incorporated Accountants and Auditors, and Mr. Sydney Pears, F.C.A., representing the Institute of Chartered Accountants. In our last issue we set forth the evidence placed before the Committee by Mr. A. B. Bryden, C.A., and Mr. Walter Reid, C.A., on behalf of the Joint Committee of the Councils of Chartered Accountants of Scotland, and our readers will now be able to judge for themselves the official attitude of the profession towards the inquiry.

It must not be supposed that in selecting and printing this evidence submitted on behalf of the profession we regard it as of greater importance than the evidence given by Judges, members of the two branches of the legal profession, eminent officials and leading business men, but we are mainly desirous of showing the position taken up by Chartered and Incorporated Accountants without making any comment upon it which obviously would be improper while the Committee is pursuing its investigations.

Mr. Justice Eve in his memorandum of evidence before the Company Law Reform Committee, said: "There is one other matter to which I desire to direct attention, and that is remuneration paid to directors. In my opinion no body of shareholders ought to be kept in the dark as to the remuneration paid collectively and individually to

those who manage its business. I would insist on a statement being endorsed on each balance-sheet, and verified by the auditors, giving the amount in actual figures paid to each director during the period covered by the accounts, and if the accounts are those of a holding company there should be added opposite the name of each one who is a director of any of the subsidiary companies the further remuneration he has received, or has become entitled to receive, in respect of those other directorships. In some recent cases which have come under my notice I am inclined to doubt whether the shareholders generally ever appreciated that the full remuneration paid to some members of the Board approached more nearly the stipend of an archbishop. When shareholders find themselves committed to an annual charge of £15,000 plus income and super tax for the part-time services of one individual—even though he be a superman—they certainly have a right to be informed what actual cash payment such a salary amounts to; for example, is the £15,000 treated as the first or last £15,000 assessable to super tax? The recipients, fortified by the consciousness that their services are not overpaid, could not possibly object to the disclosure I suggest, though one must own that the diffidence of some persons in matters of this sort is proverbial."

Last month we commented on the proposed reduction of the Corps of Military Accountants. In this connection, Lt.-Colonel James Grimwood, C.B., F.S.A.A., has addressed a trenchant letter to our contemporary, the *Accountant*, in which he draws attention to the resolution of the Army Council that the new accounts should no longer be continued and the method existing in 1914 should be reverted to and only accounts of certain productive establishments should be kept. Colonel Grimwood says that it seems difficult to believe that this resolution will be accepted without comment by the Public Accounts Committee, and that members of the House of Commons will be content to receive no further details of the expenditure of a modern army, with all its complicated and costly activities, than did the members of the House of Commons in the days of Charles I, when the army was equipped with accounts and weapons as primitive as the tally stick and bows and arrows. Professional accountants, adds Colonel Grimwood, can only regard this as reaction in its most dangerous form, and will certainly watch with the greatest interest the trend of events.

The Autumn session of the Incorporated Accountants' Students' Society of London opens on October 6th with an address on "The Gold Standard in Theory" by Mr. John P. Colbert, B.Com., Managing Editor of the *Statist*. The lecturers generally for the session are prominent leaders of the Bar and well known members of the profession, while the chairmen who have signified their intention of presiding indicate the widespread interest taken in the proceedings of this excellent Society, the Committee and officers of which always appear to be alive to the requirements of the budding members of the profession.

By the Statutory Rules and Orders made under the British Sugar (Subsidy) Act, 1925, it is provided that the statement of profit and loss required to be sent to the Minister of Agriculture and Fisheries (for England), and to the Board of Agriculture (for Scotland), shall show:

1.—The balance of the profit and loss according to the previous year's accounts, and how such balance has been dealt with.

2.—The profit or loss on trading for the year, after charging all manufacturing and establishment expenses.

3.—All charges for interest, depreciation, directors' fees and other charges or appropriations made before arriving at the net profit or loss, as the case may be.

The statement in the form of a balance-sheet (which has also to be supplied) and the statement of profit and loss have to be made up to March 31st of each year and sent to the Government department within 90 days of that date, and the department may require the company to furnish them with such explanations in relation to the accounts as may seem to them to be proper. The statement in the form of a balance-sheet has to be audited by the company's auditors and must contain a summary of the company's share capital its liabilities and assets, and must give such particulars as will disclose the general nature of same and how the values of the fixed assets have been arrived at.

We have received from the Bureau of Public Affairs, American Institute of Accountants, a Bulletin on the subject of Credit Frauds. There appears to be a wide movement in the United States of America to infuse into public and business affairs a high moral standard, and the Bureau of Public Affairs of the American Institute have been charged with the duty of bringing before the public by investigation and publicity practical directions in which improvements may be effected. It is interesting to note that the Bulletin has received the commendation of Mr. A. W. Mellon, Secretary of the Treasury. In regard to bankruptcy, the Bureau urges the appointment of an accountant as trustee in the administration of bankrupt estates, and point out the advantage which England has derived from this practice. There is a complaint

that in America the costs of winding up bankrupt estates are too high. The Committee state: "Estates are whittled down by large fees and unsatisfactory appraisals, by forced sales of stocks at figures far below actual values, and by incompetent handling of the business affairs of the bankrupt."

The type of bankruptcy in America appears to be similar to that to which the notice of the recent Board of Trade Committee on Bankruptcy Law Reform was drawn, namely, that of obtaining long credit, disposing of goods otherwise than in the usual course of business, followed by the bankruptcy of the debtor. It is also considered that the period during which preferential payment is illegal prior to bankruptcy is too short. The Bureau commend the provision of the English Companies Acts as to compulsory audit of accounts, but reference is made to the defect that "it is not required that the auditor shall be a Chartered or Incorporated Accountant, the two classes of accredited practitioners in England." The Bureau add it is strange that a practice which is so obviously desirable and which has been in effect in England for a generation or more should not be required by law in the United States. We trust the work of the Bureau of Public Affairs of the American Institute will meet with public support in the United States.

Mr. T. E. Pickering, who was recently elected a City Auditor for Sheffield, has curious ideas regarding the duties of his office, from which he has intimated his resignation to the Town Clerk. In his letter of resignation, he says, *inter alia*, "I, as an auditor, cannot conscientiously (especially under prevailing distress and injustices) give my signature and approval to corporation accounts which reveal the fact that about half-a-dozen corporation officials receive in wages more than £15 in money per week on an average, whereas several corporation workers only receive on an average £2 5s. in money wages per week, and unemployed task workers under the recent Coalition Guardian cum Corporation scheme, even less still. In addition to all this, one brother, commonly known as a duke, receives from the Sheffield Corporation Tramways £12 per week in money value from ground rent, for doing nothing, as also do certain vicars and others receive lesser amounts under similar conditions." It is quite time that the elective auditor farce, which is treated with contempt by the burgesses of most towns, was put an end to by Parliament.

Some interesting figures are given in the statistical report for the year 1924 issued by the King Edward Hospital Fund in relation to the London hospitals. The total income of these hospitals for 1924 was £2,918,000, as against £2,860,000 in the preceding year and £1,485,000 in 1913. The improvement in the financial position of the hospitals since the crisis of 1920 is rather striking, the net aggregate deficits having been converted into net aggregate surpluses. The proportion of expenditure covered by each kind of income is as follows:—From investments 20 per cent., from voluntary gifts 38 per cent., from payments by patients and other earnings 30 per cent., from legacies, &c., 18 per cent. The surplus of income over expenditure for the year 1924 is thus shown to be 6 per cent. These figures are a remarkable tribute to the success of the voluntary system especially in view of the depressed state of the trade of the country.

The Board of Trade is apparently determined to enforce strictly the provisions of the Business Names Act, 1916, and the Companies (Particulars as to Directors) Act, 1917. They issued a summons in the case of a Manchester company for sending out a postcard which did not contain the names of the company's directors, and the result was a fine of 20s. and £15 costs. The provisions of these Acts are important to the trading community, and this indication that they are not to be ignored will be welcomed.

The Executive Committee of the Federation of British Industries has decided to recommend the Grand Council to pass a resolution urging the Government to increase the token value of the penny by twenty per cent. and to introduce the decimal system of coinage. The reasons put forward for this recommendation are that the purchasing power of a penny is now so low that a penny-halfpenny or twopence is commonly charged for pre-war pennyworths, and that these increased prices are higher than is necessary to cover the extra cost. The sellers are, however, obliged to charge the higher prices because the present coin values are not capable of expressing the intermediate price levels. It is contended that the value of the penny could be altered without affecting the value of the £, as the penny is merely a legal tender token up to a shilling. The effect of the introduction of the decimal system would then be that 200 pence would represent a £, and there would be ten pence to the shilling instead of twelve.

From another quarter it is pointed out that from one point of view the introduction of decimal coinage would be a disadvantage, as the division of a shilling into ten parts instead of twelve as at present would not lend itself to such a fine adjustment of prices, because ten divides only by two and five, whereas twelve is divisible by two, three, four and six. There might also be a tendency to treat the

new penny as being the same value as the old, and thus in the matter of omnibus and tram fares, and in the purchase of small articles such as newspapers, the buyer might only get 200 for the £ instead of 240 as at present. It is therefore argued that the decimal system might in fact have the effect of putting up prices instead of lowering them.

The French Finance Minister is putting forward new proposals for the purpose of meeting the deficit on next year's Budget and it is understood that one of these is a tax on "unproductive wealth." There was some doubt at first as to what this precisely meant, but it is officially stated that the tax will apply solely to jewels, art collections, rare furniture, valuable pictures, works of art and luxury, &c. An ingenious method is to be adopted to overcome the difficult problem of valuation. It is proposed to take as the basis for taxation the values at which the articles are insured. The articles will not be taxed at their full insured value, but with a percentage of rebate. It is also proposed to increase the income tax as follows: Tax on salaries above a certain minimum to be raised to 10 per cent.; tax on income derived from salaries and investments combined to be raised to 15 per cent.; and tax on income derived solely from investments to be increased to 20 per cent., rising on a progressive scale to 40 per cent. on very large incomes. Dividend taxes are also to be increased. It would thus appear that the French authorities are at last realising the necessity of budgeting for a larger national revenue.

The subject of double taxation is still giving a good deal of concern. The matter has been considered repeatedly by the International Chamber of Commerce whose views have now come into line with those of the experts of the League of Nations. The difficulty, however, is to give practical effect to the conclusions arrived at. Unless all the nations come into line there is a danger that any convention concluded between two or more states might result in an exodus of their capital to another country which has not signed any convention. It has therefore been arranged by the Council of the League of Nations for a conference of experts to meet next year with the view of drafting a scheme which can be used as the programme for a general international conference. The great trouble in carrying any scheme into effect is that it is in the interest of certain States that those resident within their territory should be taxed on their entire income wherever it arises, while in the case of other countries the desire is to obtain revenue by taxing income arising from foreign capital invested within their territory.

Quo Vadis—1965?

By Sir JOSIAH C. STAMP, G.B.E., D.Sc.,

Hon. Member of the Society.

(Contributed by special request in connection with the Fortieth Anniversary of the Society of Incorporated Accountants and Auditors.)

It is pleasant—and therefore, to some extent, useful—to be retrospective in any field of knowledge or art in which there has been quiet study and useful collective work done over a long period. While we have been participants in the work year by year we have been hardly conscious of advancing steps, so trivial, halting or temporary has each seemed. It is only over a long view that we can see the evidence of material progress and change. Such change over a period of forty years in the realm of accountancy is too obvious to need emphasis; indeed, it is now almost a hackneyed topic. A wider range of application and recognition has brought about a steadily rising sense of responsibility, guild consciousness, and—partly in self protection, and partly to meet outside expectations—a steadily rising standard of professional skill

Was it not possible a few years ago for a practising accountant, with only a suspicion of exaggeration, to tell this story of his younger days relating to a test through which an aspirant to the profession was then put? On being asked for a definition of a debtor, the young man replied: "Somebody who owes someone something." This was so far satisfactory that it brought the inevitable corollary in the request for corresponding information as to a creditor. The examinee, feeling clear that it must be the complete opposite of his previous reply, answered: "Somebody who doesn't owe nobody nothing." In those not very far off days, when, after all, England's trading supremacy reached its height, the accountants' touch was by no means firm or universal. I can remember only twenty odd years ago, when a young Revenue official, that profit and loss accounts for taxpayers were confined almost entirely to the larger cases on the occasions of appeal, and I was the proud inheritor of a small black book of traditional wisdom from my elders in which I learned how to make an assessment upon a butcher from the number of beasts he killed;

on a baker from the number of sacks he baked—with a little bit on for the confectionery—and, marvel of marvels, that an aerated water manufacturer should make £100 per lorry, and be grievously suspect if he didn't! In those days balance-sheets were looked upon rather as encumbrances than as of assistance in the analysis of profit and loss accounts, and they were very rarely rendered and still more rarely used. It need not be thought that these limitations in accountancy, as applied to taxation, existed only amongst officials, for I remember one of the most eminent accountants of his class who had the task of rendering the returns of a number of large taxpayers in the Midlands, and who regarded it as a reflection on his professional competence if any question were asked about his cases. I dared to penetrate this barrier, and established him as wrong in his computations for one return on sixteen points of principle!

Retrospect like this tempts one to look forward for thirty or forty years and to ask: What then? It is human nature to think that there is unlikely to be such a change in the future as there has been in the past, and that further scope for improvement or extension is relatively limited. This, however, may be a mere habit of mind or personal prejudice. Is it possible for us, Wells-like, to take a "leap forward" even at the risk of being preposterous? Some years ago Lord Rosebery described accountants as the "financial conscience" of the community. We can only be intelligent prophets or seers if we take the accountant separately in relation to the chief social activities of our day and consider each:

1.—We must consider him as an impartial promoter of sound business in its internal aspects, *i.e.*, as standing inside the business.

2.—The exercise of industry itself and the provision of capital for it are two entirely separate functions. Accountancy stands between them as one of the most important go-betweens or essential links.

3.—The accountant in relation to the fiscal system is in a position of profound importance.

4.—The accountant's part in social and industrial relations is of growing importance.

5.—The accountant may be the promoter of exact economic knowledge.

Many people would add a sixth, viz, the accountant's part in public life as a member of committees and commissions. He makes such a useful cross section of all industry and business life that he is able to supply a unique and needed ingredient in collective wisdom, and his recent participation was very well brought out in a recent annual Conference, when the position of the accountant in public life was discussed. I do not propose, therefore, to elaborate it especially, because I think that all his worth in this capacity is really derived from his experience under the five heads to which I have referred.

Great as the position of the accountant has become in the first capacity, viz, as an indispensable and integral feature in the conduct of business, it seems to me insignificant to what it may be, for scientific costing in businesses of an average size is still in its infancy. I know a manufacturing business of considerable magnitude in the neighbourhood of Birmingham, employing a large number of hands, where the administrative head never has a document or paper of any kind, and keeps no records and needs no desk. He "administers" simply by walking round the factory and—looking. Figures of prices are carried in his head Costs are non-existent. I believe that in forty years time it will be next to impossible for such businesses to survive, save in most exceptional cases. There will be such a network of responsibility in each industry as between employers and employed, the State as tax-gatherer and the State as public watchman, that all businesses will require other numerical guides and tests than an annual balance-sheet and profit and loss account. Accountants will be very short-sighted if they do not keep a very firm grip upon these internal departments. Not only will accurate accounting extend further down into the scale of general business, but the present tentative efforts that are being made to bring it into our greatest industry, agriculture, will, I believe, with the rise of a new generation of agriculturists and the scientific missionaries from the agricultural colleges, bear full fruit, and we may expect to find reasonably kept accounts audited in most cases, kept by all the larger farmers in the next generation.

As to his second capacity, we have found that the spread of large-scale businesses and amalgamations

has increasingly divorced the conduct of business from the supply of capital. The signature of the Chartered or Incorporated Accountant to the statement upon the prospectus is now the real solid point in the whole shifting sea of promotion methods, and we have evolved a conventional system to meet our present needs. But it is doubtful whether the function he is at present allowed to perform is as exhaustive as it might well be, and there are many aspects of the business in which future development of economic society may make publicity desirable. It is at least possible that the development of the social conscience will require the customary certificate of the amount of profit made over a period of three or four years to be supplemented by information as to the conditions of the industry in regard to its workers, its competitive position in the whole supply, and its part in foreign trade, with more exact details of the actual hard capital invested than are at present thought necessary. If selective or directional saving increases, such guides will be essential.

In his third capacity—his relation to the fiscal system—immense strides have, of course, been made in the past 25 years. The success of an emergency tax, like the Excess Profits Duty, would have been almost unthinkable without taking into account the peculiar position of trust which the accountant occupies. In my opinion, the reason why it is much more difficult in Germany to secure real efficiency in tax administration, even with an elaborate differentiation of functions in the staff, is that the position of professional accountancy in the community has not advanced to anything like the same extent. I have seen in a typical revenue district in Germany that in only a small proportion of cases has a professional accountant come between the taxpayer and the Revenue to the advantage of both. Their elaborate system involves frequently sending out a Revenue official to examine books, and it needs but a little reflection to realise that it is a poor substitute. The prescription of a commercial code is also a very doubtful substitute for recognised professional assistance. It seems to me that whatever elaborations come into our taxation system in future years—complications of double taxation adjustment, sales taxes, Rignano estate duties, capital levies, or what not—the accountant is now so well entrenched in its day-to-day working, and the solicitor so completely ousted, that the prospects of accountancy remaining in the field for all new developments are of the brightest. The essential standard of probity is already very high; in the future it may need to be even higher, expressed in practice more precisely, and its obligations generally and clearly understood by all.

The vexed question as to the real duty of the accountant when he becomes aware of points in which there is at least a doubt in favour of the Revenue, and the extent to which he may be purely passive and await investigation or official initiation, does not lend itself to public discussion. There is every *degree* of obligation towards the Revenue, and a good many degrees of recognition of such obligation. The question will have been settled by a common understanding in the next generation.

We are at the beginning of the accountant's experience of his fourth capacity, that of the independent referee or "conscience" in industrial relations. The complicated arrangements affecting the whole of the coal industry in the last three or four years under the agreement would have been quite impracticable without the assistance of the professional accountant. Whatever measure of social or industrial control comes into the conduct of industry—and it will probably be large in the next three decades—the accountant will be in it all. His presence will not necessarily be an index of continued bad faith and suspicion existing between the employing interests and the employed, for even the utmost goodwill in business relations does not dispense with accurate records and elaborate principles adjusted by disinterested skill. But he will be accepted as a natural part of all machinery for profit-sharing and variable rewards, whatever form they may take, as well as for all control in the interest of outside parties. Those developments which are presaged by the possible operations of the Food Council—the necessity for knowledge of and control of price-fixing in essential industries, the cost and distribution of food and so forth, every kind of prevention of profiteering, or of the abuse of a particularly advantageous economic position—are all hopeless without his aid.

In the fifth place my readers will smile and say I am "barking up the old tree" when I speak of the accountant as the door-keeper of the new economic knowledge. But this is not a dream—it is an awakening truth. There is a precision of

knowledge of the conditions of the whole coal industry in the last three or four years, such as has never existed in the history of industry, and without which the present controversies would be sheer Bedlam. It is not necessarily to be supposed that more precise knowledge clears up all points of difficulty and difference. On the contrary, it may provide new ones by putting into cold fact what was previously only suspicion or theory. But principles clearly seen and no longer confused with disputed facts can be readily discussed. This economic knowledge has come to stay. I read only recently that in America 143 concerns in the retail meat business were regularly supplying an economic organisation with periodical information in a standard form, and similar information is becoming available for other industries, and that from this collective view new light is already being thrown upon the theory and nature of profits and the relation of marginal returns to the total volume of business. The United States are well ahead of us here, but we have a habit, when they have shown the the way for a few years, of "weighing in" really in earnest. I dare to prophesy that in forty years we shall have a precision of economic knowledge, due to aggregated accountancy throwing light on underlying economic theory, which is beyond the dreams (or nightmares) of 99 per cent. of our present professional community.

What does all this looking forward demand from us in attitude of mind? Professional competence, of course, and the unselfish dissemination, for general use, of the best methods and solutions without loss of time. These are sufficiently encouraged by the existence of established and respected organs of publicity in our present accountancy journals. Only the individual willingness to profit thereby has to be improved. To a much greater extent we have to ensure a "forward-looking" attitude of mind, rather than a reluctant relinquishing of past conceptions, on the part of all writers, lecturers and governing councils in the profession; a readiness to recognise that, while personal profit and status are indeed engulfed, they are engulfed in an extraordinary opportunity for the vital service of the community. If we suspect there is to be a modification of our social and economic structure, profound if not radical, then economic guidance is imperative. We may not call it progress, but instead of dragging pettishly at its heels, let us live in its brain-pan.

The Lien of an Accountant and Auditor.

In its primary sense, a lien is given by law and not by contract, for contract supersedes lien and limits the rights to those contracted for. A lien does not usually arise until possession of the property is obtained, but in certain cases possession is not essential to constitute a common law lien, *e.g.*, a maritime lien. In its secondary sense a lien is where the person claiming the lien has not possession of the thing in respect of which the lien is claimed, *e.g.*, equitable liens which are founded upon the consideration of a duty or implied intention on the part of the owner to make property answerable for a specific claim.

A lien is a species of security, but differs from a mortgage, charge or the like in this respect, that in the case of a mortgage or charge the origin of the debt is immaterial (*e.g.*, a loan; a debt for goods sold), whereas a lien can only be a security on property which is or has been the subject of a transaction between the parties. A lien is a right of defence, not of action, and consequently can be claimed in respect of a statute-barred debt. But a lien does not, except in special circumstances, give any right to sell the thing retained, nor can the lien itself be assigned. The possession must be rightful, it must not be for a particular purpose, and it must be continuous. If a man gets possession of a thing by misrepresentation he has no lien upon it, although in the circumstances he might have had a lien had he come by it fairly (*Madden* v. *Kempster* (1807) 1 Camp., 12). An agent who has been employed by a person who subsequently becomes bankrupt cannot by obtaining possession, after the bankruptcy, of goods belonging to the bankrupt, either through an act of the bankrupt or of his own, retain the goods as against the bankrupt's trustee until moneys due to him from the bankrupt are paid. Where property is placed in the hands of another for a particular purpose, and that purpose is at an end and the documents are allowed to remain in the hands of a person, *e.g.*, a solicitor (who is entitled by custom to a general lien), such general lien is good.

A general lien entitles a person in possession of chattels to retain them until all his claims against the owner are satisfied. It can only exist by (1) express agreement; (2) a common law right arising from continuous and well recognised usage; (3) the particular course of dealing between the parties in a special case. General liens have been established in the following cases: Bankers, stockbrokers, insurance brokers, solicitors, but not accountants and auditors. "General liens are a

great inconvenience to the generality of traders, because they give a particular advantage to certain individuals who claim to themselves a special privilege against the body at large of the creditors, instead of coming in with them for an equal share of the insolvent's estate. All these general liens infringe upon the system of the bankrupt laws, the object of which is to distribute the debtor's estate proportionately amongst all the creditors, and they ought not to be encouraged." (Le Blanc (J.), *Rushforth* v. *Hadfield* (1805) 6 East, 528.)

In order to establish a general lien in a particular case, *i.e.*, arising by usage, the usage must be certain, reasonable, and so universally acquiesced in that everyone in the trade knew of, or, on inquiry, could have ascertained its existence. To establish such a general lien there must be satisfactory evidence of numerous and important examples of its exercise; if the evidence is sufficient to establish the usage the parties are presumed to be aware of, and bound by, the usage. The question whether the lien exists is one of fact.

Liens may be divided into three classes:—

(1) *Possessory or Retaining Lien, i.e.*, when a person in possession of goods which belong to another has a right to retain them until his pecuniary demands against that other are satisfied. The lien is generally lost when the lienor gives up possession of goods or by taking security in such a way as to show an intention to abandon the lien. Possessory liens may be either—

(*a*) Particular lien, where the debt was incurred in respect of something done to the goods detained, *e.g.*, an accountant upon the books of account for work done before the bankruptcy of the owner. The work must be done by the order or at the request of the owner, or of some person authorised by him, and must be completed, but if completion is prevented by the owner the lien arises for the work actually done. There is no distinction between an agreement to do the work for a stipulated sum and the implied contract to pay a reasonable sum, but, if there is a stipulated price to be paid at a particular time or in a particular manner, the lienor cannot set up a lien inconsistent with his contract.

(*b*) General lien may result from custom or contract, and may arise where the debt is not entirely in connection with the goods detained. A banker has a general lien upon his customers' securities deposited with him for overdrafts, unless the securities are deposited for some specific purpose, and can avail himself of this lien against a company as well as against any other client. Stockbrokers also have a general lien on securities held by them for clients. But in the case of either bankers or brokers the express terms of the deposit may negative or limit the implied right to a lien. General liens exist only in pursuance of a usage to that effect in a particular trade or business. If a solicitor has possession of title deeds belonging to his client he has a general lien on them, *i.e.*, he is entitled to retain them until he is paid, not only his charges in respect of the deeds themselves, but also the whole amount owing to him from the client for professional services up to that time; but this rule is not apparently applicable to accountants and auditors.

Neither of the above liens gives a power of sale.

(2) *An Equitable Lien.*—This consists of the right to have a specific portion of property set aside for the payment of specific liabilities, *e.g.*, the right of a partner on dissolution of the firm to have the partnership assets allocated in payment of the firm's liabilities.

(3) *Statutory Lien.*—When a master of a ship parts with the possession of the goods for the purpose of warehousing them, he formerly lost his lien. Now, by the Merchant Shipping Act, 1894, a statutory lien is given to a warehouseman on behalf of the shipowner.

In dealing with accountants' liens, it is of interest to note that practically all the leading cases are those of the Scottish Courts. One of the few English cases is that of *ex parte Southall* ((1848) 12 Jur., 576), which was decided before the enactment of bankruptcy statutes. This was the petition of an accountant who had been employed by a bankrupt, before the issuing of the fiat against him, to make up his books with a view to an arrangement with the creditors. A composition was originally intended, but subsequently the fiat was taken out. After the fiat was issued, possession of the books was demanded at a meeting of creditors, but the petitioner refused to give them up unless his demand was paid. Vice-Chancellor Knight-Bruce said: "There does not appear to be any decision on the question of an accountant's lien after a bankruptcy on books entrusted to him for examination and arrangement before that event. I should have been unwilling, therefore, to decide adversely to the petitioner if any wish had been expressed to take the opinion of the Court on the existence of such a lien. My opinion tends in favour of the lien, and that the applicant's claim is good, and that upon the evidence as it stands he never substantially waived it. . . . The order will be to restore the books without

prejudice to any question, the petitioner consenting to abide by any order which the Court may make as to admissions in any action which the assignees may bring for the recovery of the books."

In *Findlay* v. *Waddell* ((1910) S.C., 670), an accountant who had received certain books of a company for the purpose of preparing a balance-sheet of the company's affairs declined to surrender them to the liquidator unless the liquidator paid or assumed responsibility for his fees. It was held that as delivery of the books without prejudice to his lien would not deprive the accountant of any right he might be entitled to found on his possession thereof, the liquidator was entitled, under sects. 174 and 193 of the Companies Act, 1908, to an order to deliver up without prejudice to any lien that might be competent to the accountant. In this case it was held that sect. 164 of the Act of 1908 did not apply, as the accountant in this particular case was not an "agent or officer of the company" within the meaning of the section. Per Lord Johnston: "I do not think that an accountant employed to audit has any general lien such as a law agent (solicitor); but he has a right of retention of papers put into his hands for the purpose of the work on which he is employed until he is paid the counterpart of his employment." Auditors when formally appointed by the Articles or under sect. 112 are officers of the company, and may, in certain circumstances, become officers even when not formally appointed. The production of the books and papers to the liquidator, though without prejudice, will practically in many instances render the lien valueless.

In a recent Scottish case (*Train & McIntyre* v. *Forbes* (1925), S.L.T., 286), it was held that an accountant's lien over books of a company in respect of an account for professional services incurred by the company would entitle the holder thereof to a preference in the liquidation. The accountants refused to produce these books to the liquidator except under reservation of their lien. Lord Constable in this case said: "The first question is: What were the accountants' rights in a question with the liquidator of this company? Now in a question with a trustee in bankruptcy the rule is well settled, that a person holding documents over which he claims a right of lien cannot withhold them from the trustee in bankruptcy, but must produce them under reservation of the lien; and the effect of such a reservation is that if, in the end, a valid lien is found to have existed the person delivering the documents will have a preference over the estate. It has never been actually decided that the same principle applies in the case of a liquidation; but I think it does. In any case, Lord Blackburn has, in fact, ordered delivery of the documents under reservation of the holder's rights; and, in my opinion, the result of that order is that if the accountants have a lien they will be entitled to a preference in the liquidation. If these were the rights of this firm of accountants in a direct question with the liquidator, the next question is: What were the accountants' rights as against the plaintiffs in an action against the liquidator like the present? The accountants were asked to give up the documents to a party in a litigation, and the result of the documents being used—either directly or by excerpts—in that litigation might have been to deprive them of the benefit of their lien, which consists really of a right to withhold the documents from the person who is interested in obtaining them. No doubt the plaintiffs in this case offered to accept the books under reservation of the accountants' rights, but I do not see how reservation could secure the accountants' position, because they would have been used in the process and so made available to the liquidator. The only method by which the rights of the accountants could have been preserved in such circumstances would have been by his obtaining such an order as was made in the case of *Montgomerie* v. *A.B.* ((1845) 7 D., 553), in which the Court, while they appointed the accountant to produce documents under warrant, found that the party to that action against whom the accountant claimed a right to withhold the documents could not make use of them in the trial without paying the accountant's account. And that is the kind of order which the accountants in this case appeared in the present process to obtain. In my opinion, the accountants were entitled to come to this Court for that purpose. No doubt in the end it proved to be unnecessary, because the liquidator obtained an order for delivery of the documents in another way. But the accountants had no power to compel that course to be taken. It is said for the plaintiffs in this case that they have no concern with rights as between the accountants and the liquidator of the defending company. In a sense that is quite true. On the other hand, it is the plaintiffs' necessities in the present action which require that the documents should be produced. And if their use in the action involves prejudice to the persons who hold the documents, then I think that reasonable steps to secure the holders against prejudice are part of the expense of conducting the litigation which the plaintiffs must meet in the first place, but which they will be entitled to recover from the defenders if they succeed in their action. According to the practice in bankruptcy—and I think the same applies to liquidations—the question whether the lien is valid does not fall to be determined at

this stage. In these circumstances I think that the accountants are entitled to an allowance of expenses. In *Montgomerie* v. *A.B.* (*ante*), expenses were given against the accountant because he had taken up an unreasonable position. In the present case I do not see what else they could have done. I shall modify the expenses at ten guineas. I should add that this is not, in any way, awarded as a penalty against the plaintiffs. I do not think that they could have pursued any other course than they did, but the protection of the accountants' rights was a necessary incident in the litigation."

CHARITABLE TRUSTS ACT, 1925.

An Act to amend the Charitable Trusts Acts, 1853 to 1914. (*Passed May 7th, 1925*).

Incorporation of Official Trustees.

1.—(1) The official trustees of charitable funds shall by that name be a body corporate for all purposes, and shall have an official seal which shall be officially and judicially noticed.

(2) The power of the Treasury under sect. 4 of the Charitable Trusts Act, 1887, to prescribe by regulations the mode in which the business of the said official trustees generally is to be conducted shall include a power to prescribe by regulations the manner in which the seal of the official trustees is to be kept, used and authenticated.

(3) A company shall not be entitled to refuse to enter the name of the said official trustees on its books by reason only that the official trustees are a corporation.

(4) Sect. 18 of the Charitable Trusts Amendment Act, 1855, shall cease to have effect.

Alteration of Dates for the Making and Presentation of Certain Reports and Accounts.

2.—In sect. 60 of the Charitable Trusts Act, 1853, "March" shall be substituted for "February" as the month in which the Charity Commissioners are to make their annual report to His Majesty, and in sect. 18 of the Charitable Trusts Act, 1860, "March 31st" shall be substituted for "February 14th" as the date on or before which the annual accounts of the official trustees are to be laid before Parliament.

Short Title, Construction, Citation and Commencement.

3.—(1) This Act may be cited as the Charitable Trusts Act, 1925, and shall be construed as one with the Charitable Trusts Acts, 1853 to 1914, and together with those Acts may be cited as the Charitable Trusts Acts, 1853 to 1925.

(2) This Act shall come into operation two months after the passing thereof.

An Offer of Friendship.

The following is a copy of a letter received by a well known Incorporated Accountant from a correspondent on the Gold Coast: "I beg to inform you that I have found your name in *Incorporated Accountants' Journal* dated January, 1924, and as I wanted to become a friend to you hence I have taken the trouble of writing you to-day and hope you also will not fail to reply me as quick as possible. I am at present in a position of sending you a nice parcel providing you answer to my letter. I also beg to inform you that I always like to read books and shall be glad if you will send me some to read, newspaper or any kind of interesting books.

"I remain,

"My dear Mr. ——,

"Yours very truly,

"S.G."

Incorporated Accountants' Students' Society of London.

Syllabus of Lectures and Discussions.

The following are the arrangements for the Autumn Session:—

1925.

Oct. 6th. Lecture, "The Gold Standard in Theory," by Mr. John P. Colbert, B.Com., Managing Editor of the *Statist*. *Chairman:* Sir James Martin, Incorporated Accountant.

Oct. 13th. Lecture, "Some Practical Notes on Deeds of Arrangement," by Mr. D. Mahony, Incorporated Accountant. *Chairman:* Sir Harold Moore, F.C.A.

Oct. 21st. Lecture, "Devising a Costing System," by Mr. A. Cathles, O.B.E., C.A. *Chairman:* Mr. J. M. Fells, C.B.E., Incorporated Accountant.

Oct. 27th. Lecture, "Profit Sharing Schemes: The Accountancy Aspect," by Mr. M. E. Askwith, A.C.A., Incorporated Accountant. *Chairman:* Mr. M. J. Faulks, M.A., Incorporated Accountant.

Nov. 18th. Lecture, "Specific Performance of Contracts," by Mr. C. J. W. Farwell, K.C. *Chairman:* Mr. Thomas Keens, Vice-President of the Society of Incorporated Accountants and Auditors.

Nov. 24th. Lecture, "Points arising in various classes of Audits," by Mr. F. A. Roberts, Incorporated Accountant. *Chairman:* Mr. S. R. Hogg, D.S.O., M.C., F.C.A.

Dec. 1st. Lecture, "Application of Assets in a Receivership dealing especially with Preferences," by Mr. A. Fairfax Luxmoore, K.C. *Chairman:* Mr. F. W. Stephens, President of the Society.

All the meetings are to be held at Cordwainers' Hall, No. 7, Cannon Street, London, E.C. 4.

THE PUBLIC TRUSTEE.

The most recent report of the Public Trustee shows that the result of the year's working is a surplus of £38,019, as compared with a surplus of £30,869 for the previous year, and of £74,522 for the year 1922-23. The aggregate value of the new business, including accretions to old trusts, during the year was £16,176,619, as compared with £15,463,118 the previous year. The number of new cases accepted during the year was 926, a drop of 87 from the previous year. The drop was almost entirely in the probates. The average value of the probates accepted during the year was £19,240, and of the trusts £9,540, as compared with £15,170 and £9,983 respectively during the previous year. The number of cases completely distributed during the year was 637, as compared with 714 during the previous year, and the number of cases under administration at the end of the year was 16,188, as compared with 15,899 at the end of the previous year. The approximate value of the cases under administration at the end of the year was £181,500,000, in addition to large quantities of land which had not been valued.

The Public Trustee says: "In my last year's report I endeavoured to answer the criticism that the Public Trustee was discouraging trusts of small value. I had hoped that my answer was sufficient, but as the criticism appears to be still current it may be of use if I state that of the new cases accepted during the year no less than 62 per cent. were under £5,000 in value. The criticism probably arises from the fact that the Public Trustee is sometimes asked to accept and compelled to refuse small cases which present complications or involve liabilities, and therefore do not admit of efficient or safe administration by the Public Trustee or any other trustee."

LECTURES AND TRANSACTIONS

OF THE

Incorporated Accountants' Students' Society of London for the year 1924.

This volume is the twenty-ninth in the series of "Transactions" of the London Students' Society. The range of subjects covered is very wide, and the reports provide students with information not readily available in text-books. The subject of "Agricultural Cost Accounts" is dealt with by Mr. C. S. Orwin, M.A., Director of the Institute of Research in Agricultural Economics, University of Oxford. Mr. Orwin introduces himself as an amateur accountant, but his lecture is illuminating and interesting on all matters of account in relation to agricultural costs. He points out that his own study is particularly that of agricultural economics, in which connection he found that the statistical data for his work was very small. He considers quite frankly the difficulty involved in the technical work connected with farm costing, but maintains that cost records and other records collected in the processes of costing are indispensable in the proper interpretation by the farmer of scientific experimental work. He emphasises that it is the business of the agricultural economist, with the aid of costing investigations conducted by him, to find out the extent to which scientific discoveries can be safely applied to practical farming. The Lecturer provides graphs showing the relation between cost, yield, and cash returns with varying applications of manure, and showing the influence of management on the cost of horse labour. Various statistical tables are appended, and the Lecturer concludes by saying that, although accountancy is not a popular study with farmers, it nevertheless supplies the acid test of efficiency and is bound to play an increasingly important part in the development of industry.

The volume includes an exceptionally good report of "A Model Appeal to the Commissioners of Income Tax." It is evident from this report that the proceedings at the meeting followed very closely on the lines of an appeal in the ordinary course of practice. Two particular points of appeal are dealt with, the first in relation to a claim for specific cause, and the second dealing with the question of trading with this country as distinct from trading in this country. It appears from the report that the mock appeals were based upon concrete cases, and that the grounds of appeal as stated were not fictitious, but real, and had in fact already been argued before the General Commissioners of Appeal. A second meeting was held, at which the Acting Commissioners gave detailed explanations of the grounds on which they came to their decisions.

Mr. Robert Ashworth, A.C.A., Incorporated Accountant, is the author of a lecture on "Share Capital of a Public Limited Company." He defines a share as "the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place and of interest in the second, but also consisting of a series of mutual covenants entered into by all shareholders *inter se*." He considers in detail various classifications and denominations of share capital and stock, and then discusses the factors which have to be borne in mind in considering the fixing of dividends on preference shares and the interest on loanable capital. The procedure in connection with an increase of capital or a reduction of capital is then reviewed. In dealing with the latter point the Lecturer is clearly of opinion that reduction schemes of late have tended to act more against the preference shareholders than against the holders of ordinary shares. There is little doubt that this tendency is sinking into the minds of the investing public, and at times has a detrimental effect on the subscription for preference share capital.

"What are Profits?" is a familiar subject in the yearly volume of "Transactions." On this occasion the author of a lecture under this title is Mr. Reginald F. Silvester, Incorporated Accountant. The difficulty of the subject is apparent from the fact that the Lecturer gives nine different definitions of profit, and then falls back on the inevitable conclusion that the term "profit" is too wide in its scope to admit of any comprehensive definition. Mr. Silvester considers the matter from three points of view: (1) Economic, or what profits might be; (2) Legal, or what profits must be; (3) Commercial, or what profits ought to be. The third heading is again sub-divided and considered from the accountant's point of view.

Auditing is dealt with more particularly in two separate lectures, the first being by Mr. C. W. Braddy, A.C.A., Incorporated Accountant, on "Auditors and the Valuation of Assets," and the second by Mr. H. L. Graves, Incorporated Accountant, on "Points arising in the Completion of an Audit." Mr. Braddy summarises what he considers to be the duties of the auditor as interpreted by the Courts in various decisions. The lecture by Mr. Graves deals with certain specific points which arise in practice in the course of an audit, and is particularly useful to examination students. Mr. Fred Woolley, Incorporated Accountant, deals with an allied subject in his lecture on "The Accountant and his Client," in which he considers the relationship between the two parties under all ordinary and some extraordinary circumstances.

"Residence in Relation to Income Tax" is discussed by Mr. G. J. G. Hughes, LL.B., A.C.A. The subject is one of increasing importance and difficulty, particularly in view of the fact that residence and domicile are not necessarily synonymous. With certain rare exceptions, an individual can only have one domicile but may have half a dozen residences, whilst a corporation cannot have any domicile in the strict legal sense, but only a residence. The lecture consists chiefly of summaries of the many legal cases which have been fought on this subject. Mr. William Allen, barrister-at-law, contributes a paper on "Some Points on Corporation Profits Tax." The volume also includes the following lectures: "Partnership Accounts," by Mr. H. S. Lewis, Incorporated Accountant; "Some Notes on the Law of Banking," by Mr. C. A. Sales, LL.B., Incorporated Accountant; "Legacies and Legacy Duty," by Mr. E. W. James, Incorporated Accountant; and "Some Practical Notes on Bankruptcy," by Mr. D. Mahony, Incorporated Accountant.

Divisible Profits and Dividends.

A Lecture delivered to the Yorkshire District Society of Incorporated Accountants by

Mr. C. A. SALES, LL.B.,
Incorporated Accountant.

Mr. Sales said: It is possible that no branch of practice with which the accountant is concerned has given rise to more difficulty or a larger number of appeals to the Court than the correct determination of profits. This is largely due to the fact that there is no exact definition, and companies and individuals are therefore left with a comparatively free hand to decide what should or should not be included in the profit and loss account before the figure representing profits is revealed.

It is most desirable that some uniform practice should be adopted, since not only might the business suffer by the improper distribution of its funds by way of dividend, but the balance-sheet could not be said to represent the true state of affairs in cases where the profits had been inflated, innocently or otherwise, through neglect to charge a sufficient sum by way of depreciation of the assets or to write off capital expenditure the justification for the retention of which has disappeared.

The consideration as to what are profits arose in the case of *The Spanish Prospecting Company, Limited* ((1910) 103 L.T., 611), and the following dictum of Fletcher Moulton, L.J., is valuable as affording an indication of the judicial view: "We start, therefore, with this fundamental definition of profits, viz, if the total assets of the business at the two dates be compared, the increase which they show at the later date (due allowance, of course, being made for any capital introduced into or taken out of the business in the meanwhile) represents in strictness the profits of the business during the period in question."

This conception conforms to the method of ascertaining profits in practice where full accounts are not kept; that is, a comparison will be effected between the statements of affairs prepared at the commencement and at the close of the period under review, indicating the increase or decrease of capital resulting from the period's transactions, after allowing for any introductions or withdrawals of capital funds.

This is a good broad principle, but is ineffective where exact accounts are prepared, since the adjustments for depreciation, reserves, &c., are not standardised, but depend upon the individual views and policy of the proprietors, or those, such as directors, acting on their behalf. Moreover, one must have regard to capital appreciation as well as depreciation, so that the question of profits becomes naturally divisible into those of a capital nature and those which are earned as a result of carrying on the business.

Again, there is a distinction between "profits" and "divisible profits," as true profits can only be regarded as such after making good all losses which have arisen in the carrying on of the business, and which might include, therefore, losses of a capital as well as of a revenue nature, whereas the interpretation of "divisible profits," especially in the case of companies possessing a fixed capital, has rendered necessary many appeals to the Court with a view to deciding whether certain classes of losses need legally be charged before profits can be distributed.

With regard to the accounts of individuals and partnerships little difficulty arises, since it is a matter for the proprietors themselves to determine what amount shall be drawn out of the business. This course will be dictated by prudence in view of the fact that their liability is unlimited, and as they each personally participate in the management of the concern (or at least have the opportunity of so doing) they must be fully aware of all the circumstances, and must agree in their several cases as to what charges shall be made against the profits before any distribution takes effect.

In the case of limited companies, however, the position is fundamentally different. The management of the company is vested in directors, and the shareholders to whom dividends may be paid may know little or nothing as to the basis upon which adjustments are effected, and it is necessary, therefore, that their interests should be safeguarded by some reasonable measure of control over those who prepare the accounts and recommend the declaration of dividends. Moreover, once such dividends have been declared there is little or no opportunity of recovering them if the declaration has been in any way improper, whereas in the case of sole traders or partnerships fresh capital can be introduced if it has been found that sums have been withdrawn inadvisedly. The capital in such cases is far more elastic than in the case of a limited company.

I have said above that profits may arise through capital appreciation as well as through the medium of trading, and it has been found necessary to confine the distribution of such capital profits within well defined limits so as to prevent the exhibition of artificial profits as a result of revaluation, a process which affords ample opportunity to those whose motives are not beyond suspicion.

The result of the two leading cases—*Lubbock* v. *British Bank of South America, Limited* ((1892) 2 Ch., 198); *Foster* v. *New Trinidad Lake Asphalte Company, Limited* ((1901) 1 Ch., 208) is that, in order that capital profits may be distributed—

(1) The profit must have been actually realised;

(2) It must exist after a revaluation of the whole of the assets of the company; and

(3) The articles must permit the distribution.

These precautions are reasonable. It is only right that a distribution should be effected only out of the actual realised funds. Mere revaluations, however accurately arrived at at the time, may not be permanent, and if the excess over previous book values be distributed, the time might come when the value would fall without any opportunity of adjustment other than out of current profits.

Also a distribution should not be effected merely because of a surplus resulting from a realisation of a single asset. Other assets may have depreciated, and the capital fund of the company should certainly be intact before any surplus of this character is distributed as a special profit.

It may be difficult at times to determine exactly whether a profit which has resulted from transactions carried out by the company is actually of a capital or of a revenue nature; for example, in *Wall* v. *London and Provincial Trust, Limited* (36 T.L.R., 729), a company which was formed as a finance company, carrying on the business of buying and selling investments, had issued debentures which stood on the market at a certain date at a considerable discount. The company took advantage of this fact to purchase some of these debentures on the market for the purpose of extinction, thereby making a substantial profit in the course of reducing this liability. It desired to distribute this profit, and argued that there was no difference in effect between the profit so earned and the profit earned in the buying and selling of investments which the company was formed to do.

The Court, however, took the view that the company could not regard such a profit as being in the nature of a revenue profit as it was one which had been made as a consequence of the extinction of the company's own liabilities, and which was analogous to losses on capital account caused by the depreciation of investments charged by the debenture stock. Although there may be some little difference in principle between the case in point and the ordinary one of discount being allowed by a creditor upon an earlier extinction of ordinary trade liabilities, it may be argued that there is a certain analogy. It is a well accepted principle that a discount of this nature can be carried to the profit and loss account, and the fact that the Court laid down the principle it did in the case of the extinction of debentures renders a decision as to what are capital or revenue profits considerably difficult.

With regard to revenue profits, there is general agreement that the profit and loss account should be charged with all items of expenditure which have been incurred during the year under review, and that all reasonable reserves for bad debts, &c., should be made before the amount of profit is ascertained. The chief difficulty which has arisen in the past has been in connection with provision for depreciation of assets, and this position tends to become more confused as time goes on.

The leading case usually quoted in respect of this provision is *Lee* v. *The Neuchatel Asphalte Company, Limited* ((1889) 41 Ch.D.), but I have never regarded that case as being an ideal one. This action was brought by Lee, on behalf of

himself and the ordinary shareholders of the company, with a view to obtaining an injunction against the directors to restrain them from declaring a dividend to the preference shareholders until depreciation in respect of the mining concession had been made good. The concession was acquired in 1873, but was subsequently replaced by a new concession obtained in 1877, the consideration for the latter being £8,000 and an agreed royalty. No further issue of capital was necessary to provide this £8,000, and it was shown that depreciation had, to a certain extent, been written off between the interval of obtaining the first and second concessions. It seems to me, therefore, a question of fact as to whether the company as a whole was in a worse position at the date of the action than it would have been if the second concession had never been obtained.

In any event it was held that the company could distribute a dividend without making good the depreciation of its main asset, which was, of course, a wasting asset, the Court's decision being largely dependent upon the fact that the company's Articles provided that the directors should not be bound to reserve moneys for the renewal or replacement of any lease or interest in any property or concession. The words of Lord Lindley in his judgment have been frequently quoted as an expression of the judicial view, and I feel that I cannot afford to exclude this portion of the judgment from this lecture, although it must have been read, or should have been read, many times by students in the course of their preparation: "The Companies Act, 1862, does not require the capital to be made up if lost, and it does not prohibit payment of dividends so long as the assets are of less value than the capital called up, nor does it make loss of capital ground for winding-up. But if a company is formed to acquire or work property of a wasting nature, *e.g.*, a mine, quarry, or patent, the capital expended in acquiring the property may be regarded as sunk and gone; and if the company retains assets sufficient to pay its debts, any excess of money obtained by working the property over the cost of working it may be divided amongst the shareholders; and this is true although some portion of the property itself is sold, and in one sense the capital is thereby diminished. If it is said that such a course involves payment of dividends out of capital, the answer is that the Acts nowhere prohibit such a payment as is here supposed. The proposition that it is *ultra vires* to pay dividends out of capital is very apt to mislead and must not be understood in such a way as to prohibit honest tradings. It is not true, as an abstract proposition, that no dividends can be properly declared out of moneys arising from the sale of property bought by capital. But it is true that if the working expenses exceed the current gains profits cannot be divided, and that if in such a case capital is divided and paid away as dividend, the capital is misapplied, and the directors implicated in the misapplication may be compelled to make good the amount misapplied."

I should like to utter a note of warning at this stage, that students should take care to differentiate between the strictly legal position and what accountants would regard as constituting a policy of prudence. I shall have occasion to refer to this again later, but I do not wish you to assume, at the commencement, that the legal decisions to which I shall have occasion to refer must be regarded as establishing a hard and fast precedent compulsory of adoption in all cases.

The case of *Verner* v. *General and Commercial Investment Trust, Limited* ((1894) 2 Ch., 239), yielded another valuable contribution from Lindley, L.J. In the course of his judgment he said: ". . . . Although there is nothing in the statutes requiring even a limited company to keep up its capital, and there is no prohibition against payment of dividends out of any other of the company's assets, it does not follow that dividends may be lawfully paid out of other assets, regardless of the debts and liabilities of the company. A dividend presupposes a profit in some shape, and to divide as dividend the receipts, say, for a year, without deducting the expenses incurred in that year in producing the receipts, would be as unjustifiable in point of law as it would be reckless and blameworthy in the eyes of business men. The same observation applies to the payment of dividends out of borrowed money. Further, if the income of any year arises from a consumption in that year of what may be called circulating capital, the division of such income as dividend without replacing the capital consumed in producing it will be a payment of a dividend out of capital within the meaning of the prohibition which I have endeavoured to explain. . . . Perhaps the shortest way of expressing the distinction which I am endeavouring to explain is to say that fixed capital may be sunk and lost, and yet that the excess of current receipts over current payments may be divided, but that floating or circulating capital must be kept up, as otherwise it will enter into and form part of such excess, in which case to divide such excess without deducting the capital which forms part of it will be contrary to law. . . ."

Time will not permit of a detailed consideration of all the other cases associated with this subject, but until the case of the *Ammonia Soda Company* v. *Chamberlain and Others* ((1918) 34 T.L.R., 60) it was generally considered, from a legal point of view, that it was unnecessary to provide for depreciation of fixed or wasting assets, but that a loss of floating capital should be made good, the whole question being, however, dependent on the terms of the Memorandum and Articles and the facts of the particular case.

The position in all these cases centred upon the fact that there was nothing in the statutes to compel a company to provide for depreciation, and the fact that the Judges were compelled to arrive at the decisions they did did not reflect the commercial attitude which would normally be adopted in cases where the statutes did not apply. This was evidenced by the remarks of Cozens-Hardy, M.R., and Buckley, L.J., in *re Crabtree, Thomas* v. *Crabtree* ((1912) 106 L.T., 49). The facts of this case were as follows: A testator gave his trustees authority to carry on his business during the lifetime of his wife, to whom the profits arising from such business were to be paid. In ascertaining the profits available for payment, depreciation for plant and machinery had been provided for, and the wife contended that this ought to be disallowed as being of the nature of a capital loss. In the course of his judgment Cozens-Hardy, M.R., said: "But in the ordinary course of ascertaining the profits of a business, where there is power machinery and trade machinery which is necessary in order to perform the work of the business, it is in my opinion essential that, in addition to all sums actually expended in repairing the machinery or in renewing parts, there should be also written off a proper sum for depreciation and that that sum ought to be written off before you can arrive at the net profits of the business or at the profits of the business, and this is not provided until a proper sum, varying with the class of machinery, with the nature of the business and the life of the machinery, has been written off for depreciation."

With this opinion no accountant will be disposed to disagree, and it seems a pity that such a straightforward principle could not have been applied in dealing with cases of companies incorporated under the Companies Acts merely because such Acts are silent upon this most important matter.

The decision in the *Ammonia Soda Company's* case did much to upset pre-conceived ideas. The point at issue did not relate to the question of depreciation, but to the good or bad faith of the directors in revaluing the main asset of the company and applying the surplus resultant upon such revaluation in the manner they did. The directors were exonerated from this charge of bad faith, and it is from the remarks of the Judges that we have to draw inferences which had not previously been expressed in former cases. The facts were as follows: The profit and loss account of the Ammonia Soda Company at a particular date showed a debit balance of £19,028, and of this amount £13,722 represented depreciation written off in respect of buildings, plant and machinery. From this last were deducted subsequent profits of £5,682, and income tax recouped of £375, leaving a net debit of £12,971. As a consequence of increased yield a brine spring was revalued, there being an appreciation of £20,542. This amount was carried to reserve, and subsequently the net balance of profit and loss was written off against this, as also were goodwill, £1,500, and premium on debentures, £1,980, leaving a balance of £4,091 on reserve account. To extinguish this a transfer was made to the new and appreciated value of the asset so that this asset appeared in the balance-sheet at January 31st, 1912, at the additional value of £16,450. The company in a subsequent year actually made profits out of which they proposed to distribute a dividend, and although the question of the distribution of this dividend was not challenged judicially, the question arose as to whether it was

legitimate to distribute such profit before writing off any previous debit balance on profit and loss account.

Each of the Lord Justices of Appeal commented upon the general position in the course of his judgment, but the remarks of Scrutton, L.J., are probably the most valuable in the circumstances. In commenting upon the loss of £19,000, representing the debit balance on profit and loss account, he says: "What was lost? It was not profits, because there were no profits to lose. It could be nothing else than capital that was lost, and when you have lost a thing you cannot use it for anything else, because you have lost it. You cannot pay dividends out of a thing you have lost because it is not there to pay dividends out of. Therefore I come to the conclusion which was come to in the three cases I have mentioned, that it is inaccurate to say that if in subsequent years you pay dividends, having lost capital in previous years, you are paying the dividends out of the capital that you lost in the previous years. It is only possible to support that suggestion by assuming the profit, when made in a subsequent year, as in some way automatically turned into capital and as replacing the capital that has been lost, and by saying that what was made as profit has in some way automatically become capital and must be treated as capital. I can find no foundation for this in statute or decisions, and the three Court of Appeal cases binds me to hold the opposite."

From this it would appear that the Court's view was that the company was not compelled to make good a loss of capital, however such loss had arisen, out of the profits in future periods; in other words, each period of account was to be regarded as being separate and distinct, and if at the end of any such period losses had arisen, the capital fund of the company was thereby decreased, the shares being worth so much less. If profits are earned in subsequent periods, provided that all losses which arose in these periods were duly met and that sufficient floating capital remained to be able to extinguish the liabilities as and when they became due, there would appear to be no obligation on the company to refrain from the distribution of such profits, even though apparently the loss took the form of a debit balance on profit and loss account.

This revolutionises the pre-existing view that all losses of floating capital should be made good, but the position remained far from satisfactory inasmuch as the conclusions drawn did not form the subject of the decision itself.

At this point, therefore, it would appear that from the legal point of view the position may be summarised as follows:—

(1) The profit and loss account is not a "running account," but a separate account each year, and that if dividends be paid out of a proper credit balance in one year's trading such dividend is not paid out of capital.

(2) The Companies Acts do not require a company to keep its capital intact, but merely forbid any capital to be returned to the shareholders.

(3) Whether or not profits must be appropriated to replace capital previously lost depends entirely upon the company's own regulations, but

(4) When declaring dividends the company must retain sufficient assets to pay the company's debts and liabilities (see the remarks of Lindley, L.J., in *Lee* v. *Neuchatel Asphalte Company, Limited*, and in *Verner* v. *General and Commercial Investment Trust*).

These conclusions have received support as a consequence of the decision in the recent case of *Stapley* v. *Read Brothers, Limited* (40 T.L.R., 442). In this case the company had for many years adopted the practice of appropriating some of its profits for the extinction of goodwill, with the result that this asset was ultimately entirely written off. For the year 1921 the company made a net loss on profit and loss account of £45,802, reduced after deduction of the business contingency fund and the balance of profits brought forward to £15,707. In 1922 there was a further loss of £4,787, making a total debit to profit and loss of £20,504. In 1923 the company made a net profit of £13,430. The preference dividends for 1921-22-23 were unpaid. There had been issued 100,000 5 per cent. cumulative preference shares of £1 each. The directors desired to pay off the three years' preference dividends, and to enable this to be done recommended that the former debit balance on profit and loss account be carried to suspense account and written off against a reserve of £40,000 to be created by writing back this amount (£40,000) out of the profits applied in the past in writing off goodwill, goodwill being restored in the balance-sheet as an asset at that figure. It was held that the profit and loss account of a limited company is not to be treated as a continuous account so as to preclude the declaration of dividends out of profits earned in a particular year until any debit on profit and loss in respect of previous years has been made good, the Court in this respect following and affirming the decision in *Ammonia Soda Company* v. *Chamberlain*. It was further held that where a limited company has in a previous year purported to apply part of its profits in writing off a corresponding amount from the value of goodwill, but the shareholders have not intended for all time and in all circumstances to give up their claims to these profits, and where the company has afterwards written back those profits on the ground that the goodwill was standing in the company's books at less than its true value, the company is not precluded from treating these profits as available for dividend if there is nothing in the constitution of the company to prohibit it from so doing.

It will be noted that an entirely new principle, hitherto unrecognised in accountancy practice, has received the approval of the Court, viz, that where it is thought desirable in any year to apply a certain proportion of the profits to writing down such an asset as goodwill such application may not be regarded as permanent, but that adjustments can take place in future years so as to bring such appropriations back into the profit and loss account when needed for the purposes of distribution, provided that the asset in respect of which the adjustment is made does not stand in the balance-sheet at more than its then existing value. This will open the door to the possibility of a very undesirable practice. There seems no doubt, in practically every case, that where shareholders agree to write down any particular asset it is for all time, subject, of course, to any scheme of reconstruction of the company concerned; the practice of subsequent adjustment would therefore be very undesirable.

In circumstances where for some reason it is considered desirable to write up the book value of an asset, either on account of over provision for depreciation in the past or an actual appreciation of its value, the transfer of such excess to capital reserve is undoubtedly to be recommended. Of course, in the latter case (*i.e.*, an actual appreciation) the profit could not be distributed, as such action would be in conflict with the legal decisions on the point.

I have dealt almost wholly with the question of depreciation since this provides the greatest field for discussion and differences of treatment, but it must be remembered that in ascertaining the amount of the divisible profits not only must all outstanding liabilities be brought into account, but also capitalised expenditure, which is not now represented by any real value to the company, should likewise be written off. I refer to large expenditure on advertising account the utility of which has expired or which cannot be regarded in the nature of permanent goodwill, preliminary expenses, commission paid upon the issue of shares, &c., which should not be allowed to stand in the balance-sheet for an unreasonable period; and any other amount in the nature of a fictitious asset should be treated in a similar way.

Dividends.

Before recommending the declaration of a dividend, in whatever form such dividend may take, directors need not feel themselves bound to observe the strict legal conditions enunciated above. The Courts were only called upon, in the cases that came before them, to give a decision as to the strict legal position, and it is not suggested that a company should regard itself as being compelled to follow these decisions in actual practice. Whatever the legal position may be it is undoubtedly a sound policy to provide for depreciation on all assets if such depreciation has actually arisen, and also to extinguish any debit balance on profit and loss account by allocating thereto sufficient of the profits subsequently earned. The company should always pursue a policy of prudence in these matters since dividends once distributed are practically impossible of return, and even though such distribution may have been perfectly legal, the result may be that the company would be embarrassed by a shortage of circulating capital and compelled subsequently to resort to some method of increasing it. It is, of course, a matter

entirely for the discretion of the shareholders, or rather the directors who make the recommendation, as to whether secret reserves should be created, *e.g.*, by the writing down of goodwill which has not itself decreased in value, and regard should also be had to the probable profit-earning capacity of the company in the immediate future, as well as the possible opportunities for useful employment of the liquid capital.

In the declaration of interim dividends the directors should proceed with considerable caution. They are not bound, under Table A, to raise accounts before distributing such dividends, and they should make sure that there is every possibility that the profit which they estimate has been earned to date, will be continued for the remainder of the year. The general policy is for such interim dividend to be considerably less than the rate of the final dividend, and is usually paid a considerable period after the half-year to which the dividend relates has expired, as an additional precaution against such dividend being paid out of capital.

In the case of final dividends these must be declared by the shareholders in general meeting upon the recommendation of the directors who have had the opportunity, by reason of the completion of the accounts, to ascertain the amount of dividend which is justifiable. In order to guard against a prudent policy of the directors being upset by the majority of the shareholders, Table A provides that no greater dividend can be declared than that recommended by the directors. It is of course possible for the directors to amend their recommendation at the annual general meeting, but they should not allow their considered judgment to be overborne by pressure of a section of shareholders at a meeting, especially as such shareholders may not be aware of the whole of the facts of the case.

Where exceptional profits have been earned or capital profits are being distributed, it is desirable to make the distribution in the form of a bonus so as to avoid inaccurate comparisons being effected with other years. In some cases companies prefer to raise a dividends equalisation account so as to maintain a dividend of a constant or increasing amount, so affording a greater sense of security to the shareholders, who are thus also able to estimate more closely the income they will probably receive.

Where large amounts have been transferred in the past to reserve, these are frequently capitalised by the issue of bonus shares; but time will not permit in this lecture to deal fully with the advantages or disadvantages of such a course. Sometimes the distribution is made in the form of a dividend, there being no option given to the shareholders to take cash; but in other cases such option is given, resulting in uncertainty as to the extent of the capitalisation which will result.

Where dividends are payable on preference shares, it is not infrequently the practice to pay such dividends on specified dates. It must not be forgotten, however, that such dividends are only payable out of profits, and that merely because a particular date of payment is specified, the payment is automatic in all circumstances. Regard must always be had to the actual state of affairs, and the directors should withhold such distribution, if considered necessary, until such time as accounts may be prepared or the position was clearly such that the dividends could be paid with safety.

Where the dividends are cumulative, the delay in payment apart from temporary inconvenience is not of material importance, provided of course that the company is ultimately able to effect the distribution; but where there are no cumulative rights, the preference shareholders have a claim only against the profits of each particular year, and it is consequently of additional importance that no payment is made which is not justified by the profits earned.

Professional Appointment.

Mr. Richard Pilling, A.S.A.A., Assistant Borough Treasurer of Bacup, has been appointed Accountant to the Tipton Urban District Council.

ADMINISTRATION OF ESTATES ACT, 1925.

The following extracts from the Act and Schedules relate to the order of application of assets of deceased's estates, solvent and insolvent. By sect. 56 of the Act the Intestates Acts, 1884 and 1890, and sect. 130 of the Bankruptcy Act, 1914 (which deals with the estates of deceased insolvents), are repealed in so far as they apply to deaths occurring after the commencement of the new Act, viz, January 1st, 1926.

Administration of Assets.

Sect. 34.—(1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I of the First Schedule to this Act.

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person.

Subject as aforesaid, nothing in this Act affects the right of retainer of a personal representative, or his right to prefer creditors.

(3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to Rules of Court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the First Schedule to this Act.

FIRST SCHEDULE.

Part I.

Rules as to Payment of Debts where the Estate is Insolvent.

1.—The funeral, testamentary, and administration expenses have priority.

2.—Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

Part II.

Order of Application of Assets where the Estate is Solvent.

1.—Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies.

2.—Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.

3.—Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

4.—Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

5.—The fund, if any, retained to meet pecuniary legacies.

6.—Property specifically devised or bequeathed, rateably according to value.

7.—Property appointed by will under a general power, including the statutory power to dispose of entailed interests, rateably according to value.

8.—The following provisions shall also apply—

(*a*) The order of application may be varied by the will of the deceased.

(*b*) This part of this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets.

THE INSTITUTE OF BOOK-KEEPERS, LIMITED.

A musical evening was held under the auspices of the Institute of Book-keepers, Limited (by Guarantee), at the New Princes' Galleries, Piccadilly, W., on September 17th.

After the reception the chair was taken by Mr. Geo. G. Papps (Member of the Council).

The CHAIRMAN said: Ladies and gentlemen, as you will observe, we have a number of items to get through this evening, three of the most welcome of which you are just going to have placed before you. We are honoured by the presence of Mr. Freeman, the President of the Institute of Chartered Accountants, Mr. Stanhope Pitt, the President of the Society of Incorporated Accountants and Auditors, and Mr. Slack, the President of the Chartered Institute of Secretaries. I am sure we are very much obliged to them for the honour they are doing us by being here, and we are grateful to them because they have kindly consented to speak to us.

Mr. GEORGE R. FREEMAN, F.C.A. (President of the Institute of Chartered Accountants), who was received with applause, said: Ladies and gentlemen, I take it this is a social function and you do not want much in the way of a learned lecture, so I will not occupy very much of your time, but Mr. Eldridge very kindly asked me to address you this evening and I will make a few remarks. In the first place I should like to congratulate Mr. Eldridge and Mr. Papps on the excellent programme, to thank you for asking us to this gathering, and to congratulate the Institute on the great success so far attained. The foundation of a new Institute is always a matter of some speculation, but I am sure the Institute of Book-keepers has been founded on sound lines, will go on and prosper and will be a force in commerce, not only in the City of London, but throughout the world. I see there are members distributed in all parts of the world, so your influence should be felt in commerce generally.

I have read with great interest the examination papers sent to me with the programme of to-night, and these papers show a very excellent and steady grade from the preliminary to the fellowship stage. They are model papers and such that any book-keeper should be proud to pass. I am quite sure there are some examiners who would be helped by reading some of the questions you have set in your examinations. The Institute of Book-keepers gives a diploma of qualification, and the Fellowship is a qualification I feel sure will be of great benefit to you. The time may come when a qualified book-keeper such as this Institute turns out will be a practical necessity—and I hope it may be so—as book-keeping is a science that must be carefully watched, and the book-keeper who is qualified is sure to be of very great use and will be required by big commercial concerns. If you have qualified as a book-keeper and have your certificate, that is not sufficient, but you must keep up to date in the various new ideas that occur in book-keeping and study not only the books you have to deal with yourself, but also the books of other concerns and get their ideas. That is the thing to do. One finds in professional life all through that one is always learning, and you will find many ways of increasing your knowledge by looking at the books of other concerns, studying their methods, and reading literature such as the quarterly volume I have sent to me by Mr. Eldridge, which I read and find very interesting.

Professional accountants come into contact a great deal with book-keepers. They have always been of great use to professional accountants. I may say there are three classes of book-keepers—the wicked book-keeper, the bad book-keeper, and the good book-keeper. They have all been of use to accountants. (Laughter.) The wicked book-keeper is the man who deliberately makes false entries for the purpose of fraud, and he has been of use to me as my firm has been called in to find out what has actually happened and, of course, have received a fee for it. The bad book-keeper is one who does not know his job and muddles his books. Again we are called in to put things right, and sometimes receive a reasonable fee for doing so. Then we have the good book-keeper. As auditors, it is our duty to check figures, and it is much easier to check figures that we know are likely to be right before we start to look at them.

There is not much scope for humour in book-keeping, but I may be allowed to recall two instances which are rather amusing. There was a big allotment of shares and there were a large number of applications, and the sums had to be always even pounds—and that was a job we had to do. We had been working all night, and about five o'clock in the morning some of us were getting rather sleepy. Approaching one, I said: "Well, Johnson, how are you getting on?" "Oh, I am getting on very well; at all events I have got the dots right." (Laughter.) The other instance was in connection with a condensed milk firm which had its account at the Bank of England. The junior clerk who had charge of these ledgers, tried to journalise all his entries, but presumably did not know the difference between the ledgers of the Bank of England and the customer, and when it came to be checked the auditor said: "What a lot of condensed milk the Bank of England seem to want." (Laughter.)

With reference to the journal I want to remark that in my opinion a knowledge of journal entries is what the book-keeper wants. If he can put all entries he has to deal with in the form of a journal entry, it shows that he must understand book-keeping pretty thoroughly. If he can put all his entries in the form of a journal entry in his mind he knows book-keeping fairly well, and that is one of the things that will prove very helpful. If you do that and the ledger and journal agree, you know your entries are right.

One other little remark I should like to make. There is one verse in Omar Khayyam which is very apt. It is:—

> The moving finger writes; and, having writ,
> Moves on: nor all thy piety nor wit
> Shall lure it back to cancel half a line,
> Nor all thy tears wash out a word of it.

You should keep that in mind. If a book-keeper makes a mistake he should never take it out with a knife. Never put a knife on a book. It is very wrong, in my opinion it is a crime. If you do make a wrong entry through information being scanty or any reason, rule a neat line through it so that what was there before can be seen. I want once more to congratulate you on the success of your Institute, and to thank the Council for the kind invitation to Mrs. Freeman and myself, and for the beautiful flowers given to Mrs. Freeman. (Applause.)

Mr. G. STANHOPE PITT, F.S.A.A. (President of the Society of Incorporated Accountants and Auditors), who was received with applause, said: Ladies and gentlemen, after the most interesting and instructive address from the President of the Institute of Chartered Accountants, I find myself in the pleasing position of collaborating with him in that Institute that he so greatly adorns. He really has dealt with the subject matter in such an able manner that in your interests I should confine myself to associating myself with the whole of his remarks, which were full of words of wisdom. When our forefathers founded the great City Companies they did so mainly with the idea of giving instruction to the younger generation in the arts and crafts, and encourage men to specialise. In this respect the Institute of Book-keepers is following a very worthy example, the importance of which cannot be over estimated in these days of commercial depression. I must say I regret very often the fact that the executive side of the great business institutions gets more than its fair share of the credit for the results achieved at the expense of the administration, and in the Institute of Book-keepers you have a means of correcting that position to a great extent by all of you becoming experts in the art of book-keeping and obtaining a diploma. I should like to refer you to the fact that the banks have their Institute, the insurance men have their Institute, and I hope that in the near future this Institute of Book-keepers will extend its influence throughout the great commercial community, and that promotion will be dependent on the obtaining of the diploma of the Institute of Book-keepers. It will be of the greatest advantage to commercial business as well as to book-keeping throughout the country. Unless I should be accused of putting before you impossible ideals, I would remind you that the apparently impossible is sometimes obtainable. A lecturer was once leading his audience to the very highest ideal and said he supposed there never had been a perfect person. A lady rose and said that he was wrong, as her husband's first wife was a perfect person. (Laughter.) On behalf of the members of the Society of Incorporated Accountants I congratulate you on the results you have achieved so far, and I hope that in the future they may be exceeded. (Applause.)

Mr. James W. Slack, F.C.I.S. (President of the Chartered Institute of Secretaries), said: I came here to-night as the representative of the Chartered Institute of Secretaries, and it seems to me that secretaries keep a somewhat middle position between book-keepers and accountants. The secretary has the right of looking over the book-keeper's work and then pass it to the accountant, and he puts his ticks against it and then it goes before the shareholders. I must, however, trespass on your patience for a minute; I want to associate myself with the other two speakers and say how pleased I am to be here, and should like to congratulate you on this social gathering. I believe that this is the first time you have had such a function, and I hope it will not be the last, as I am a great believer in social gatherings by organisations of this kind, as it helps to rub off the corners and helps you to get to know each other better.

With reference to book-keeping, 50 years ago I attended a book-keeping class which purported to teach double entry book-keeping. I am afraid the teacher did not know anything about it—(laughter)—he was the science master, and when this new subject came along he was asked to take it over, and did so. He was Irish, however, and got a lot of humour into it. However, it did start one on the road to proper book-keeping. There were not so many aids in those days as now, there was only one small text book. That reminds me of the book-keeper who was unable to make his books agree. He was told to make them balance, and although he made many attempts he was unable to do so. To make things right he placed an item on one side "by error" so much, and then the two sides added up all right. (Laughter.) The auditor came along and said "Whatever is this"? He replied "It is a mistake, and you are paid to find it out." (Laughter.) If you submitted that sort of thing to Mr. Freeman or Mr. Pitt to-day I am afraid their advice to the directors would be to make a change in the book-keeper. It is very advisable to study all questions of book-keeping. On behalf of the Chartered Institute of Secretaries I am very pleased to be here, and I will give you all the help I can. I feel you have progress written distinctly on your programme, you have a live secretary—(hear, hear)—and as you know everything depends on the secretary. With a live secretary you are sure to make progress. (Laughter.)

Mr. H. J. Eldridge, F.S.A.A. (Secretary), who was received with applause, said: Mrs. Freeman has very kindly consented to present the prizes won in our June, 1925, examinations. The number of candidates was 726. (Hear, hear.) We never have so many in the summer as in the winter months. Last December we had over 1,000 entries to the examinations of the Institute of Book-keepers. The first position in the June examination was gained by Mr. A. A. Smith, Junr., of Glasgow. He cannot spare the time from business to come from Glasgow, so Mr. McLean will take the books he has chosen. He has obtained first place with distinction in Stage 3 (Fellows) examination, and takes the Institute's Prize, the Scots' Prize (presented by Mr. A. B. Bell, of Glasgow), and the American Prize (presented by Mr. V. J. Kiralfy). The next is Mr. J. H. Edwards, of Worksop, who has gained the first position in Stage 2 (Associates) examination with distinction. The first place in Stage 1, Part 2 (Elementary) was gained by Mr. H. J. Upton, of Leyton. In Stage 1, Part 1 (Preparatory), Mr. G. W. Sands, of Cape Town, gained first place. Of course, Mr. Sands is unable to be present to-night. (Laughter and applause.)

The Chairman: I want to propose a very hearty vote of thanks to Mr. Freeman, Mr. Stanhope Pitt, Mr. Slack, and also Mrs. Freeman for kindly coming here this evening and helping us by their presence and by their valuable and interesting speeches, and to Mrs. Freeman for presenting the prizes. The encouragement we have received from these gentlemen and Mrs. Freeman is something we shall not forget for a long time. It gives us the feeling that we must get on and do our best. We have been doing so, but it is just this encouragement we want to help us on our way. I want to propose that a very hearty vote of thanks be accorded to them for their kindness. (Applause.)

Mr. Eldridge: I should like to second that, and in doing so I should like to incorporate in it the names of those gentlemen on the Councils of the Institute of Chartered Accountants, the Society of Incorporated Accountants and Auditors, and the Chartered Institute of Secretaries, and other prominent gentlemen who have honoured us by being our guests here this evening. (Applause.)

Mr. Freeman: On behalf of Mr. Pitt, Mr. Slack, the representatives of the Councils, Mrs. Freeman, and myself, I want to thank you very much for the kind words of Mr. Papps and Mr. Eldridge. As I have already said, it is a great pleasure to be here. We have had a very interesting entertainment so far and are looking forward to further interesting entertainment. I should perhaps just add a few words, and that is that I see no reason why book-keepers, professional accountants and secretaries should not run together very well indeed. There is no reason why we should not keep our respective spheres quite clearly and encourage each other in our work. (Applause.)

A musical entertainment then followed under the direction of Mr. S. R. Carr, Int.Mus.Bac. (Lond.), later followed by dancing to the Princes' orchestra.

Changes and Removals.

Mr. E. Andrews, Incorporated Accountant, has removed to Abbey Chambers, 12, Abbey Square, Chester.

Messrs. James Baird & Co., Incorporated Accountants, of 75, High Street, Belfast, have opened an office at Church Street, Coleraine, the resident partner being Mr. H. F. Bell, Incorporated Accountant.

Mr. H. J. B. Feist, Incorporated Accountant, has commenced public practice at 46, Maddox Street, Regent Street, London, W.1.

The partnership existing between Mr. E. Garner and Mr. A. Daniels, Incorporated Accountant, under the style of Garner & Daniels, has been dissolved. The practice will be continued by Mr. A. Daniels at Bank House, 63, Osborne Road, Southsea, under his own name.

Messrs. Gharda, Davar & Co., Incorporated Accountants, have removed to 111, Esplanade Road, Fort, Bombay.

Messrs. Harper, Groves & Co., Incorporated Accountants, of Tower Chambers, Pride Hill, Shrewsbury, have opened a branch office at St. Mary's House, St. Mary's Street, Whitchurch, Salop.

Messrs. Albert A. Henley & Co., Incorporated Accountants, have admitted into partnership Mr. J. G. Randall, A.S.A.A. The business will be carried on under the same style as hitherto.

Mr. H. S. Jackson, Incorporated Accountant, has removed his Rochdale office to Junction Chambers, 5, Oldham Road.

Mr. F. W. Kilvington, Incorporated Accountant, has commenced public practice at 17, Scarborough Street, West Hartlepool.

Messrs. Kingsford, Garlant, McDonald & Wigzell have removed their Maidstone office to 37, King Street.

Mr. R. C. Mehta, Incorporated Accountant, has commenced public practice at Examiner Press Building, Medows Street, Fort, Bombay.

Mr. S. N. Mukherji, Incorporated Accountant, has moved to 5, Dalhousie Square, East, Calcutta.

Mr. A. E. Norfolk, A.C.A., Incorporated Accountant, has commenced public practice in partnership with Mr. W. C. Burkinshaw, F.C.A., at 2, Parliament Street, Hull.

Mr. L. M. Oakes, Incorporated Accountant, has removed to 20, Copthall Avenue, London Wall, London, E.C.2.

District Society of Incorporated Accountants.

YORKSHIRE.

Annual Report.

The committee have pleasure in submitting to the members the thirty-first annual report as follows:—

MEMBERSHIP.

The number of members on the roll is 273, made up as follows: Fellows 41, Associates 88, Students 144.

LECTURES AND DISCUSSIONS.

Ten meetings were arranged during the 1924-25 session, and were well attended by members; the mock meeting of creditors, held in conjunction with the Bradford District Society, on January 13th, drew a record number.

LIBRARY.

A number of books have been added to the library during the year.

EXAMINATIONS.

Particulars of successful candidates at the November and May examinations of the Society are as follows: Final, 9 members; Intermediate, 10 members; Preliminary, 4 members. Our congratulations are given to Mr. C. Clive Saxton, of Barnsley, on his being awarded the First Place Certificate and Prize at the Intermediate examination in May, 1925.

CONFERENCE.

The Autumnal Conference of the Parent Society was held in Leeds and Bradford on October 1st, 2nd, 3rd and 4th, 1924; and proved a most successful gathering of Members from all parts of the country.

The programme was arranged by the Local Reception Committee of Yorkshire members, in conjunction with Mr. A. A. Garrett (of London), the Secretary of the Society. Generous hospitality was extended by the Lord Mayor and Lady Mayoress of Leeds and the Lord Mayor and Lady Mayoress of Bradford. The dinner of the Society was held at the Victoria Hall, and the visitors were also entertained by the Leeds and Bradford members.

FINANCE.

Our thanks are due to the Parent Society for a useful grant towards the cost of lectures and other educational work of the District Society.

BENEVOLENT FUND.

The Committee regret that a number of practising accountants are not yet subscribers to the Incorporated Accountants' Benevolent Fund, which renders valued aid to members of the profession who, through sickness or old age, require assistance, and urges all our members to contribute thereto before September 30th next, when the financial year ends.

The subscriptions are as follows:—Annual Subscribers, 10s. 6d.; Life Subscription, £5 5s. Cheques can be sent either to Mr. A. A. Garrett, Hon. Secretary, London, or to Mr. T. W. Dresser, 97, Albion Street, Leeds.

Syllabus of Lectures.

All lectures are held in the Chapter Hall, Church Institute, Albion Place, Leeds, unless otherwise stated.

1925.

Sept. 25th. Annual General Meeting at Liberal Club, Quebec Street, Leeds. *Chairman:* Mr. Fredk. Holliday, F.S.A.A., President.

Oct. 6th. "Executorship Law," by Mr. J. W. Bromley, Solicitor, of Leeds. *Chairman:* Mr. Fredk. C. Crosland, A.S.A.A., Leeds.

Oct. 20th. "Statistics and their Application to Commerce," by Mr. A. Lester Boddington, F.S.S., London. *Chairman:* Mr. G. H. C. Davies-Higgins, A.S.A.A., Leeds.

Nov. 3rd. Mock Creditors' Meeting, at Bradford. *Chairman:* Mr. Herbert Bray, A.S.A.A., Leeds.

Nov. 17th. "Economics." *Chairman:* Mr. Thos. Hayes, F.S.A.A., Leeds.

Dec. 1st. "Income Tax with regard to Section 34 Claims, and Super-Tax in relation to Companies," by Mr. H. W. L. Reddish, A.C.A. *Chairman:* Mr. J. W. Carter, F.S.A.A., Leeds.

Dec. 15th. "Examinations," by Mr. William Claridge, M.A., F.S.A.A., Bradford. *Chairman:* Mr. Fredk. Holliday, F.S.A.A., Leeds.

1926.

Jan. 19th. "Income Tax," by Mr. Roger N. Carter, F.C.A., Manchester. *Chairman:* Mr. Arthur France, F.S.A.A., Leeds.

Feb. 2nd. "Conversion of a Business into a Private Company," by Mr. Herbert W. Jordan, London. *Chairman:* Mr. Alfred Walton, A.S.A.A., Leeds.

Feb. 16th. Mock Shareholders' Meeting, at Leeds.

Mar. 2nd. "Cost Accounting, Present and Future," by Mr. J. M. Fells, C.B.E., F.S.A.A., London. *Chairman:* Mr. Wm. Gaunt, F.S.A.A., Leeds.

Mar. 16th. "Problems in Partnership Accounts," by Mr. C. A. Sales, LL.B. (London), F.S.A.A. *Chairman:* Mr. Oswald Coope, A.S.A.A., Leeds.

ACCOUNTANT-LECTURERS' ASSOCIATION

ANNUAL MEETING.

The twelfth annual meeting of the Accountant-Lecturers' Association was held at Lincoln House, Holborn, London, W.C., on September 14th, Professor Lawrence R. Dicksee, M.Com., F.C.A., presiding. The following are extracts from the report:—

For the first time in the history of the Association the expenditure has been greater than the income, the deficiency for the year amounting to £5 4s. The balance brought forward from previous years, however, still leaves a surplus in hand.

During the year the committee have instituted the "Accountant-Lecturers' Bulletin," and there has been a wide demand for this publication from persons outside the Association. It has proved a useful medium for interchanging the views of the members of the Association, but the committee look forward to its being of greater use in the future. The cost of running the "Accountant-Lecturers' Bulletin" has been considerable, and it is due to this fact that the expenditure has exceeded the income during the year.

The decision of the members at the last general meeting to alter the rules so as to admit "graduates of any university of the United Kingdom who for that degree have taken accounting as one of their subjects," has obtained numerous applications, which the committee have carefully sifted.

Colonel Grimwood's resignation as a vice-president was accepted with deep regret, but the committee have much pleasure in stating that Colonel E. W. Crawford, D.S.O., C.M.A., A.C.A., has kindly consented to take his place.

The following officers were elected for the ensuing year:—President: Professor Lawrence R. Dicksee, M.Com., F.C.A. Vice-Presidents: Mr. Roger N. Carter, M.Com., F.C.A.; Professor T. P. Laird, M.A., C.A.; Mr. H. S. Ferguson, F.S.A.A.; Colonel E. W. Crawford, D.S.O., A.C.A., C.M.A. Hon. Secretary and Treasurer: Mr. M. Moustardier, A.S.A.A., A.C.I.S., 69, Downs Road, London, E. 5.

An interesting discussion took place on Army Accounts, and the Association endorsed the view expressed by Colonel Grimwood, C.B., D.S.O., F.S.A.A., deploring the resolution of the Army Council abolishing the system of cost accounting in the Army, and enforcing the cash system which had been in use since the reign of Charles I.

Society of Incorporated Accountants and Auditors.

MEMBERSHIP.

The following additions to, and promotion in, the Membership of the Society have been completed since our last issue:—

ASSOCIATE TO FELLOW.

Brown, John Stirling (J. Stirling Brown & Co.), 121, West George Street, Glasgow, Practising Accountant.

ASSOCIATES.

Andrews, Frank, Clerk to Whinney, Smith & Whinney, 4b, Frederick's Place, Old Jewry, London, E.C.2.

Bartley, Eric Oswald, City Treasurer's Department, The Council House, Birmingham.

Bell, Harold Frederick, Clerk to James Baird & Co., 75, High Street, Belfast.

Bryce, Stanley, Clerk to Joseph Miller & Co., Gibb Chambers, Westgate Road, Newcastle-on-Tyne.

Eadie, William Allan, City Chamberlain's Department, City Chambers, Glasgow.

Gibson, William Norman, Clerk to Leather & Veale, East Parade Chambers, Leeds.

Little, Cyril Eric, Clerk to Stephenson, Smart & Co., Queen Street Chambers, Peterborough.

Lumley, Douglas Frank, Clerk to G. W. Spencer, 10, Bush Lane, Cannon Street, London, E.C.4.

McKenzie, Charles James, Clerk to Todd & Gordon, 224, St. Vincent Street, Glasgow.

Turner, Thomas Daniel, Clerk to Harper Smiths, London and Provincial Bank Chambers, Norwich.

Unwin, John, A.C.A. (Arthur Hallett, Unwin & Co.), Studio Buildings, Regent Street, Wrexham, Practising Accountant.

ACCOUNTANTS' LIABILITY FOR A SOLICITOR'S BILL.

In the Mayor's and City of London Court on September 15th, before Mr. Registrar Dell, a claim was made by Messrs. F. A. Dean & Co., Certified Accountants, 60, St. Mary Axe, London, E.C., against Mr. A. L. Banks, 32a, Barretts Grove, Stoke Newington, engineer and tool maker, for £6, money paid at the request of the defendant. Mr. William Doughty, partner in the plaintiff firm, said the defendant gave them instructions to collect a debt. This they found they were unable to do, and defendant asked them to employ their solicitors. Solicitors were employed and they were unsuccessful, and sent in a bill for their charges amounting to £7 7s. The defendant grumbled about the charges and said he could not pay. Plaintiffs then got into touch with the solicitors, who agreed to reduce their charges to £6, and this sum the defendant asked them (plaintiffs) to pay for him, which they did. It was that sum they were now claiming against the defendant. The defendant said he was advised by a friend to go to the plaintiffs to get a debt collected. He knew nothing about a solicitor being engaged until he got a bill for £7 for charges incurred in not collecting a sum of £14. Had the plaintiffs gone about the matter properly they could have obtained the money for him from his debtor. The Registrar said the plaintiffs were in a difficulty. It was an unusual procedure for accountants who had been instructed to collect a debt to employ solicitors to do so, because they ran the risk of having to pay the costs. In cross-examination the defendant said he had since employed Stubbs to collect his debts, and was charged 5 per cent. He had gone to the plaintiffs because he was informed they were the right people to collect a debt. Six months afterwards he got a letter from a solicitor whom he had never heard of before. The Registrar said that the plaintiffs had gone outside their normal province. It was true that accountants could collect debts from people who were willing to pay them. The plaintiffs had no authority to employ the solicitor, and the solicitor had treated the plaintiffs as his clients. The case was struck out, the defendant being allowed costs.

COMMITTEE ON THE COMPANIES ACTS.

Evidence submitted on behalf of the Society of Incorporated Accountants and Auditors.

The following evidence was submitted by Mr. George Stanhope Pitt (Bolton, Pitt & Breden, Incorporated Accountants, London), President of the Society. This evidence is believed to be representative of the views of Incorporated Accountants.

1.—Constitution and Incorporation.

(*a*) *Form and Contents of Memorandum and Articles of Association.*—The Memorandum of Association should be modified in important details from its present form. The mass of detail in the Objects Clauses relating to the purposes and powers of the company should be relegated to the Articles of Association. It is suggested the Memorandum should be restricted to:—

(i) The name of the company with the last word "Limited."

(ii) The domicile of the company.

(iii) The main and dominant objects of the company's existence, the subsidiary objects being inserted in the Articles.

(iv) A statement that the liability of the members is limited.

(v) The authorised share capital of the company and the shares into which it is divided; also the rights of the respective classes of shareholders.

(It is regarded as important that the rights of the respective shareholders should be defined in the Memorandum. It is considered that the rights of preference shareholders—where their position is preferential as to capital and income—are insufficiently safeguarded, because when severe losses are incurred the ordinary shareholders frequently are able to throw part of the loss upon the preference shareholders, whose privileges of participating in increased profits are small or do not exist, and whose responsibility for losses should be correspondingly restricted.)

Articles of Association should contain additionally:—

(i) Schedules of the subsidiary objects of the company and all necessary powers, which may be altered by special resolutions without reference to the Court.

(*b*) *Restrictions on Name of Company.*—No observations.

(*c*) *Power of a Company to Alter*—

(i) Its objects. A company should have power to alter its main and dominant object by special resolutions plus confirmation of the alteration by the Court. (The effect of the present law is that when the main object has disappeared the company should be wound up.)

(ii) The respective rights of different classes of shareholders shall not be interfered with except by special resolutions plus consent of Court, by simple administrative process under Rules of the Court.

(These alterations are suggested in order to eliminate the necessity for the present somewhat cumbersome process, which alterations to subsidiary objects and details contained in the Memorandum involve; these proceedings occupy the time of the Court and involve considerable unnecessary expense to the company. All reasonable safeguards would be provided by the foregoing suggestions.)

(*d*) *Effect of Certificate of Incorporation.*—It is not proposed to offer evidence.

(*e*) *Preliminary Expenses.*—Companies should be compelled to write off all preliminary expenses out of profits (including underwriting commission) over some limited period, say five years.

2.—SHARE CAPITAL.

(*a*) *Reduction of Capital.*

(i) Method to remain as at present, when the reduction affects rights of creditors or other third parties, *i.e.*, where a return of capital is made to shareholders, where there is a diminution of the liability of shareholders on partly paid shares, or where an alteration affects the rights of shareholders *inter se*.

(ii) By special resolutions and separate resolutions of each class of shareholders omitting sanction of Court when reduction does not fall under any of the above headings, *e.g.*, when a debit balance is standing on profit and loss account and it is written off by reduction of capital,

There is a voluntary surrender of fully paid shares of the company for the purpose of reducing capital:

Except that any dissenting shareholder or shareholders should have the right to apply to the Court within a limited period, say 30 days, for confirmation, amendment or rejection of the special resolutions.

(iii) The use of the words "and reduced" should be abolished. The use of these words tends to be prejudicial to the company and does not seem to serve any useful purpose.

(*b*) *Issue of Shares at a Discount.*—This should be prohibited as at present. The former issue of stock at a discount, as in the case of railway companies, has led to a considerable amount of watered capital.

(*c*) *Underwriting Commission.*—This item should be shown in the balance-sheet separately, apart from the preliminary expenses and rigidly written off in the same way as other preliminary expenses. The actual number of shares underwritten should be set out in the prospectus as well as the rate of commission.

(*d*) *Rights of Preference Shareholders.*—The rights of preference shareholders—who are preferential as to capital and income—should be protected effectually in the Memorandum of Association (see under 1 (*a*) v).

(*e*) *Shares of no Par Value.*—The principle under which shares in a ship are divided is not recommended for application to companies.

(*f*) *Distinguishing Numbers of Shares.*—Present system to be maintained as in sect. 22 (2) of the Companies Consolidation Act, 1908.

3.—ISSUES AND OFFERS OF SHARES AND DEBENTURES.

(*a*) *Contents of Prospectus.*—This is a legal question upon which the Society does not propose to offer any detailed evidence, save as indicated below.

(*b*) *Liability for Statements in Prospectus.*—Other than extracts from public documents and those contained in definitely signed reports, the liability should be restricted to the directors and promoters. Persons making reports should, however, be liable for the statements contained in their reports. Statements of average past profits should be prohibited, except in cases where the figures on which they are based are indicated clearly. It should be prohibited by law for an estimate of future profits to be given in any auditor's or accountant's certificate.

(*c*) *Offers for Sale, Circulars, Advertisements issued to comply with Stock Exchange requirements and other Press Notices.*—It is suggested that all offers for sale should comply with the law as to prospectuses making directors and/or promoters responsible in such cases. It is possible at present for the company or the agency offering the shares to avoid responsibility. (See Mr. H. M. Samuels' Offer for Sale Bill, 1924.)

(*d*) *Statement in Lieu of Prospectus.*—The same observations apply to a statement in lieu of prospectus in the case of public companies.

(*e*) *Minimum Subscription.*—The present law with regard to minimum subscription may be defeated by the fact that the minimum subscription can be fixed at such a low figure as seven shares. This may be open to theoretical objection, but in practice it is not thought that any serious question exists or that any amending legislation is called for.

4.—MORTGAGES AND CHARGES.

(*a*) *Registration and Right of Inspection.*—No evidence offered, except in so far as the question affects auditors as noted below.

(*b*) *Floating Charges.*—All charges created or mortgages effected should be shown on the face of the balance-sheet as well as being registered at Somerset House. It should be the duty of the directors to produce to the auditors a certificate from the Registrar of Joint Stock Companies of mortgages outstanding and of charges registered, with an indication of the amount and particulars. This provision is suggested in order that the auditor may check the register of mortgages and to see that all mortgages and charges are properly incorporated in the balance-sheet.

(*c*) *Preferential Payments.*—The words "shall be paid forthwith out of any assets, &c.," in sect. 107 of the Act relating to preferential payments should be qualified. At present it would seem that the receiver is bound immediately on his appointment to realise assets probably at a great sacrifice and with disastrous results to the undertaking, in order to pay the preferential debts. It should also be made clear whether assets comprised in a floating charge in favour of first debenture holders, and also included in a fixed charge in favour of second debenture holders, are immune from the operation of sect. 107.

It would not be unreasonable, it is suggested, that a receiver on behalf of debenture holders, having a floating charge, should, with the sanction of the Court, have power to carry on the undertaking with the aid of the assets comprised in the floating charge, or by borrowing upon the security of the same so as to bind preferential creditors, if the Court is satisfied that it is in the best interests of all concerned.

(*d*) *Restrictions on Rights of Secured Creditors.*—It is not proposed to submit evidence.

5.—DIRECTORS.

(*a*) *Qualification Shares.*—Their number should be fixed by Articles as at present; there appears to be no reason why the qualification should not be a low one, as the appointment of a director should not necessarily be dependent on a large capital holding.

(*b*) *Remuneration including Payment of Fees Free of Tax.*—Directors' fees are in some cases paid free of tax and they should be shown separately in the profit and loss account, including tax. Any arrangement to pay fees free of tax is the expressed will of the shareholders under the Articles of Association and therefore it is not considered that an alteration of the law would serve any useful purpose.

(c) *Liability for Negligence and Indemnity Clauses in Articles.*—It seems reasonable that indemnity clauses against ordinary as distinct from wilful negligence on the part of directors, should be permitted. If conditions are made too onerous reputable men will decline to act as directors and take responsibilities they cannot properly sustain. Therefore, reasonable indemnity clauses in Articles of Association are justified as being in the best interests of commercial enterprise.

(d) *Contracts and other Transactions between a Company and its Directors.*—It is not suggested that there should be any fundamental change in the present law as to disclosure.

6.—Accounts.

(a) *Obligation to Keep and Form.*—A statutory right should be given to shareholders of public companies to receive at least once in every year a balance-sheet: that is, it should be made compulsory to issue a balance-sheet to the shareholders, and this should not be left to be determined by the Articles of Association as at present. It should also be obligatory for the company to keep its accounts on a proper commercial basis by double entry.

(b) *Form and Contents including Matters to be Disclosed with a View to Protecting Shareholders or Intending Shareholders and Creditors.*—From the point of view of the economist it is doubtless desirable that standardised forms of account should be adopted for different classes of industrial undertakings. These have been adopted with advantage in the case of water, railway, electricity and insurance undertakings, which are governed by special Acts of Parliament. It is doubtful, however, whether it is practicable to extend standardised forms of accounts, having regard to the wide variety of businesses involved and the information which the standardised forms would give to trade competitors. Such a proposal would probably not meet with the approval of the commercial community.

It should be made a statutory obligation for public companies to issue to shareholders each year a balance-sheet showing—

Assets side—

(1) Tangible assets
(2) Intangible assets

} With a brief note appended to each item as to the method of valuation.

As regards (1), tangible assets should be shown in sufficient detail as to give reasonable information to shareholders, and the following headings are suggested as a minimum:—

Freehold and Leasehold Property.
Plant and Machinery.
Stock in Trade.
Investments in Stock Exchange Securities.
*Other Investments.
Loans.
Book Debts, showing separately any items due by officers of the company.
Cash and Bills.

In every case where assets or any portion of assets have been pledged by way of security for loans or debentures, a note should be made against the assets concerned showing clearly to what extent and how the assets have been charged.

As regards (2), intangible assets should be separated so that

Goodwill,
Preliminary Expenses,
Underwriting Commission,
Profit and Loss Account (any debit balance),

are shown as distinct items.

Liabilities side—

Capital Authorised.
Capital Paid up.
Debentures Authorised.
Debentures Paid up.
Creditors.
Loans.
Free Reserves (shown separately).
(Where specific reserves are earmarked they should be deducted from the corresponding asset on the other side of the account.)
Balance Profit and Loss Account.
Memorandum as to Contingent Liabilities.

There has been an increasing tendency for the information given in balance-sheets of companies to be attenuated, although owing to pressure of public opinion some reaction against this tendency has set in more recently. It is believed that the foregoing classification would provide a reasonable statutory minimum for balance-sheets: it would not necessarily comprise every item which companies may need to introduce: it lends itself, however, to elasticity and at the same time provides proper safeguards. It would counteract the tendency of recent years to consolidate items in the balance-sheet which might be shown separately. Thus more information would be given to shareholders without prejudicing the commercial interests of the company.

As regards the profit and loss account, its form should be left in the hands of the directors, except that directors' fees should be shown separately.

(c) *Filing.*—Companies should be compelled to file with the annual list and summary an actual balance-sheet for the year as indicated above. The period for filing the annual list and summary, after the annual general meeting, should be based on a sliding scale, having regard to the number of shareholders. In the case of private companies, relief in filing a balance-sheet under the present law should be maintained, as the necessity for any further restriction does not appear to have arisen.

(d) *Rights of Shareholders to Inspect.*—To be determined by Articles of Association, save that there should be a statutory obligation for a company to issue a balance-sheet annually.

(e) *Accounts of Holding Companies and their Subsidiaries.*—As regards the much discussed question of holding companies, in general it is considered the classification indicated above should be sufficient to give shareholders proper information and to protect creditors. It is not felt that any rigid and inflexible obligation beyond those already suggested should be imposed on holding companies. It is recognised that in certain cases where the holding company holds the whole of the capital of the subsidiaries it may be advantageous for the holding company to issue a combined supplementary balance-sheet comprising all the assets and liabilities of the separate subsidiary companies.

Pressure of opinion on the part of the investing public has already been sufficient to induce some holding companies to issue amalgamated balance-sheets. It is recognised that this is salutary, but the Society's Council is not prepared to recommend that this be made obligatory. There appears to be no good reason why holding companies should be singled out for special treatment.

(f) *Secret Reserves.*—Even if it were desirable, it is not clear that any effective means is available to eliminate absolutely by statute all secret reserves. From a purely commercial point of view secret reserves are a benefit, provided always they are not used for the deliberate manipulation of profits and/or for unjustifiable dealings in shares by the directors.

* As regards investments in other companies, the shares of which are not quoted on the Stock Exchange, in the valuation of such securities the directors should take into consideration all losses sustained by such companies and all relevant circumstances.

Secret reserves have been a great advantage to companies, where in times of depression they have been able to draw upon secret reserves to meet special losses without any disturbance of public opinion or uneasiness on the part of shareholders. In practice, it has been found that secret reserves have been administered favourably and properly. It is not considered that any legislation in this respect would be either possible or desirable.

(*g*) *Miscellaneous.*—It is desired to call attention to the desirability of imposing upon companies a statutory obligation to create a general reserve fund. No doubt such a reserve fund is provided in all well conducted companies, but it is believed the creation of statutory reserves would give an increased degree of stability to company finance, which would redound to the general advantage of commerce and industry. It is suggested, therefore, that the plan adopted in the French Company Law might be considered, namely, that 5 per cent. of profits should be set aside in each year to constitute a reserve fund, until the reserve amounts to one-tenth of the subscribed capital of the company. The charge then ceases to be imperative, but it must be resumed actively when the reserve fund falls below the prescribed 10 per cent. of capital.

7.—ASCERTAINED AND DIVISIBLE PROFITS INCLUDING PAYMENT OF DIVIDEND OUT OF CAPITAL.

No company should be in a position to declare dividends out of current profits without first making good past losses.

8.—AUDITORS.

(*a*) *Rights of Auditors to Demand Information and Inspection.*—The present powers appear to be sufficient.

(*b*) *Duties of Auditors*, with regard to:—

(i) *Inspection of Securities.*—It should be compulsory for auditors to inspect securities wherever they are able to do so, save that in the case of:—

(1) Securities held on behalf of a company by a joint stock bank; a certificate of the bank should be accepted by the auditors. (A list of banks authorised to act for this purpose should be approved by the Board of Trade.)

(2) Securities held by the company abroad; an auditor should appoint an agent who should forward a certificate as to such securities which would be accepted by the auditor.

(ii) *Calling the Attention of Shareholders to Matters which it is desirable they should know (such as Loans to Officers of the Company).*—This should be left to the auditor's discretion, save that an auditor should be compelled to draw attention to any loans to or by officers of the company.

(*c*) *Indemnity Clauses in Articles.*—Experience shows that auditors carry out their onerous and responsible duties to the best of their skill and ability. It is, therefore, undoubtedly proper that they should be protected in the same way as directors.

(*d*) *Miscellaneous.*

(i) It should be a duty of the auditor to be present at the board meeting at which the balance-sheet is approved, for the purpose of giving such explanations to the directors as they may require. This need not prejudice his position as a guardian of the rights of shareholders.

(ii) Provision should be made by statute that the qualification of auditors of companies should be that of the Chartered Accountants or the Incorporated Accountants. The bodies of Chartered Accountants and Incorporated Accountants have definite standards of admission, which comprise both practical professional training and examination; the members of these bodies are subject to stringent disciplinary control and conform to the recognised standards of conduct in the accountancy profession. The designations of these bodies have received the protection and recognition of the High Court. In the case of private Acts of municipal corporations in England, Parliament has laid it down that the standard of auditors' qualifications shall be that of the Chartered Accountants and the Incorporated Accountants. It is believed the adoption of this standard in the case of public companies would be of advantage to the public.

(iii) Sect. 113 (3) should be amended so that shareholders should obtain a copy of the auditor's report without payment.

(iv) Every auditor of a company shall be sent notice of all meetings of shareholders and shall have a statutory right of attendance. He should also have a right to address the shareholders at such meetings.

(v) Share qualification for the appointment of auditor should be unnecessary.

(vi) With regard to the appointment of auditors, it is suggested that sect. 112 (4) of the present Act be amended so that notice should be given to the auditors of a company whenever any change is proposed to be made with regard to the auditors; for example, in the case where it is proposed to re-elect one of two joint auditors instead of both the joint auditors.

9.—REORGANISATION.

(*a*) *Scheme of Arrangement.*—In the case of a private partnership any debit to profit and loss is automatically written off against capital account. A similar principle should apply in the case of a company. This writing off should be effected by special resolution (as indicated above under the heading Reduction of Capital) without reference to the Court. It is an ordinary business transaction: any non-assenting shareholder should have the right to apply to the Court within 30 days as a safeguard.

(*b*) *Reconstruction.*—It is not proposed to offer any evidence.

(*c*) *Rights of Minorities.*—The present arrangement as to arbitration and costs seems satisfactory in principle as tending to discourage obstructionist tactics in reconstruction schemes.

(*d*) *Power to make a Compulsory Levy on Shareholders.*—The adoption of the recommendations of the Wrenbury Committee are advised in regard to assessment of shareholders. The recommendations of the Wrenbury Committee would give facilities to companies, which have met with some reverse, to raise additional capital without great expense and without the cumbersome process of liquidation and reconstruction. This suggestion would in no way prejudice the rights of shareholders, but limit their liability, since they would be entitled to claim to be bought out at an agreed or arbitrated figure.

10.—WINDING UP.

(*a*) *Voluntary.*—It is considered that this is the most satisfactory method of dealing with the liquidation of a company. The method of appointment of a liquidator and the confirmation of his appointment by the creditors should remain as at present. It would be more satisfactory, however, if it were a statutory obligation for the liquidator to be assisted by a committee of inspection of shareholders. If the creditors apply to the Court for the appointment of a joint or substitutional liquidator, the Court should also have power to add creditors to the committee of inspection.

(*b*) *Compulsory.*
(*c*) *Under Supervision.*
(*d*) *Miscellaneous.*

No evidence is suggested.

11.—Private Companies.

(*a*) *Trading by Individuals under the Name of a Private Company.*—On the whole the advantages which this practice offers outweigh the possible disadvantages. In fact, the facilities offered by legislation for the formation of private companies have been advantageous on the whole. Abuses have undoubtedly arisen, particularly in connection with one-man companies. This abuse it is believed can best be dealt with by suggestions under heading (*d*).

(*b*) *Exemption from Filing Accounts and other Privileges.*—The present privileges and restrictions in regard to private companies appear to have met a public need in a satisfactory manner; no variation is recommended except as indicated below.

(*c*) *Conversion into Public Companies.*—No evidence submitted.

(*d*) *Miscellaneous.*—It is considered that the issue by private companies of debentures constituting a floating charge has lent itself to abuse. The real proprietor of the business may be able to defeat creditors by obtaining control and possession of the assets by the company issuing a debenture to him or to his friends. This abuse might be remedied by the strengthening of sect. 212 of the present Act, in the respect of lengthening the period from the commencement of the winding up to a period of two years. If, however, in the opinion of the Committee this amendment is insufficient to meet the case, then the power to issue debentures should be taken away from private companies altogether.

12.—Companies Established Outside the United Kingdom.

No evidence is suggested.

13.—Miscellaneous.

One of the difficulties in dealing with company law amendment is that stringent statutory provisions enacted for the purpose of restraining fraudulent companies and protecting the public against nefarious methods of company promoting, would place too great a restriction upon well managed companies to the detriment of enterprise. In dealing with this subject certain notorious scandals have not been left out of account, but in the opinion of the Society's Council, company management on the whole has been satisfactory and honest, and the suggestions made are put forward with a view to extending facilities as well as imposing restraint. The Companies Acts, subject to certain details and changes which the fluctuation of time and the evolution of commercial practice have rendered necessary, have fulfilled their purpose on the whole in a reasonably satisfactory manner. In judging company finance as a whole there may be too great a tendency in the public mind to place stress upon certain notorious failures, which, although very serious in themselves, are relatively to the aggregate comparatively small. It would be a mistake, therefore, to draw too sweeping inferences from such cases in dealing with company law amendment.

Mr. George Stanhope Pitt, F.S.S.A., called.

(The Chairman): You are here to answer any questions on the Memorandum which the Society of Incorporated Accountants and Auditors have given to us?—That is so.

I should like to ask you a few questions upon it. First of all, I notice you wish to have the rights of shareholders defined in the Memorandum?—Yes.

Have you come across cases where the fact that they were not defined in the Memorandum has been a great handicap to the company?—No, but the object of that recommendation is this, that I feel that the preference shareholder is the very backbone of company finance, and I feel that he has been rather hardly dealt with for some years past, and unless greater protection is given to the preference shareholder I am afraid that company finance will greatly suffer. I quite agree that it is rather a question for gentlemen learned in the law to point out the direction in which he can be safeguarded to a greater extent, and my object was to raise the point that the rights of the preference shareholder should be clearly defined in the Memorandum and Articles of Association as, may I say, an additional measure of protection.

Can you tell me in the case that you are referring to, where the preference shareholder has had his rights cut down, whether as a matter of business, from the point of view of the company as a whole, it is a good thing or a bad thing?—From the point of view of the company?

I will tell you what I mean. One has come across cases where the only way in which the company could get fresh capital was by cutting down the rights of preference shareholders, because nobody would put the money in and take up, for instance, ordinary shares so long as the company was overburdened with preference shares carrying a high rate of dividend. Is that the class of case you have come across?—Yes, there are cases of that class which I have come across.

Do not you think the power to alter the right of the preference shareholder in such a case is very good, not only from the point of view of the company, but also from the point of view of the shareholders themselves?—Provided they are dealt with in a just manner, but my feeling is that they have suffered unduly in the past to the benefit of the ordinary shareholders.

Of course the class of case you are thinking of is a case where the rights have been modified under a modification clause?—Yes.

It is that class of thing?—Yes.

Where of course a majority is required?—Yes.

There are complications in that class of case, are there not?—Sometimes, because ordinary shareholders also hold a large number of preference shares. That is very often the case.

Taking it apart from that particular class of case, do you see any advantage in leaving it to a decision of a substantial majority of the shareholders to say what they should do?—Not to a substantial majority; I should like to see it left to a greater majority, because I think an undue influence is brought to bear on the preference shareholders. For instance, the ordinary shareholder will come to him and say: "Unless you agree to all sorts of modifications, notwithstanding the fact that you have only had 5 per cent., and notwithstanding the fact that it was a condition of your allotment that you should have preferential treatment, unless you will modify your rights and greatly reduce your amount of capital at stake, we shall throw the company into liquidation, and in that event you will get even worse treatment than we offer to you to-day." I have no doubt influence has been brought to bear upon the preference shareholder in that way and that, unless some stiffening, some better guarantee, can be given to the preference shareholder to-day, you will find that the public at large will refuse to take up preference shares.

It is very often true, is it not, that, unless the preference shareholders are prepared to make a concession, liquidation may have to follow?—It may be true in some cases, but my own feeling is that the preference shareholders—and I believe this is very strongly held amongst preference shareholders as a whole—have not been adequately protected and the ordinary shareholder has taken advantage of their position.

Is not that rather their own fault if they choose to vote by a three-fourths majority in favour of their rights?—It may be

largely their own fault in many cases, but first of all you have to get them together and get them into a fighting mood. The preference shareholder investor who is satisfied with his 5 per cent. or 6 per cent. is the class of investor who needs protection; he realises that he takes his shares on the fact that both his income and his capital will be preferential, and when he is attacked I think that he is a class of investor who cannot properly take care of himself, and unless the law is stiffened in some way it will be a serious thing for company business, because, at the risk of repeating myself, I say that I regard the preference shareholder as the backbone of companies.

Is not this phenomenon of the treatment of preference shareholders' rights very largely what I may call a post-war happening, arising out of the preference shares issued at high rates of dividend in about the years 1919, 1920 and 1921, and so on?—Not necessarily so, but I think it is a new idea which has arisen in the last few years. I cannot recollect before, say, five or six or a few years before that, the rights of preference shareholders being attacked as they are now day by day; it is almost every day.

I was rather putting it to you that the reason why it has been necessary to attack the preference shareholders is largely due to the times we have been going through.—I do not think so, because I do not think the preference shareholder has ever had an undue share of the profits. I think a man who is willing to accept 5, 6, 7 or 8 per cent. in these times is entitled to protection, both as to his income and as to his capital, and I do not think he has in any way been given a fair position.

What you want to do is at any rate to have the consent of the Court before the special rights of classes of shareholders can be affected?—Quite.

Your position is so clearly stated that I shall be able to run through it quite quickly. I will pass over the points on which I do not wish to ask you questions. I see that the memorandum says you wish to prohibit the issue of shares at a discount?—Yes; I have no sympathy with the issue of shares at a discount, because it would tend, of course, to watered capital. On the other hand, I think at a later stage of my evidence I have referred to the right to make calls on fully paid shares. There I think you have sufficient machinery for all practical purposes, and the idea of issuing shares at a discount—I have seen it in the case of railway companies when the railway companies were first started—has made the capital of the railway companies even to this day unwieldy. If I may mention, for instance, the Great Eastern Railway Company, it is a fact that they issued a great body of their ordinary stock at a very heavy discount. I have no sympathy with the principle of issuing shares at a discount at all.

(Mr. CASH): What is the objection?—because the cash goes into the coffers of the company. Take the Great Eastern Railway Company, for instance: they issued stock at say 30 and the £30 went into their capital account, and it shows to-day in the capital account as £30. Who is hurt by that?—They have to pay to-day interest on £100.

It is a remuneration for the £30 paid in?—Yes. My point of view is that it is watered capital, and it is unsatisfactory from a company point of view.

(The CHAIRMAN): Is this what you have in your mind, that if a company has issued shares at a discount, supposing it has issued 100,000 £1 shares at a discount of 40 per cent., it looks upon itself as having issued £100,000 worth of capital?—Exactly.

And what it would aim at doing would be to pay its dividend of a certain amount on that capital?—Certainly: it must.

I do not know whether you have had any experience of finance in the United States, but is not that one of the very things that in the United States they found so troublesome, what they call the watering of capital, which has had what we may call the psychological effect on companies of making them strain to pay what appears to be a good rate of dividend on the whole of their nominal capital, although that was never really represented by cash or assets coming into the company?—Certainly.

Watering has been one of the great troubles in American finance?—And even in English finance; I mean to say you have only to take your mind back to the old days and that very illustration you gave me just a moment ago; the effect of the issue of £100,000 of capital for £60,000 in cash means of course that you have to add £40,000 to your goodwill. I think it is altogether an undesirable move. We pride ourselves on the stability of our finance in this country, and the idea of watering in any direction is certainly hostile to my views.

I am very much interested in this point, because it raises a psychological element which is not obvious, but which has had very great influence in the United States, and indirectly has led to their issuing no par value shares. That is the very thing which has caused them to introduce it?—Yes, quite.

So it may be that if the legislature thought fit to sanction the issue of shares at a discount they would have to sanction the no par value shares, in order to counteract the results of it?—Yes, that is so.

With regard to the statements in a prospectus, I see you want to limit the insertion of statements of average past profits?—Yes.

You say: "Statements of average past profits should be prohibited, except in cases where the figures on which they are based are indicated clearly." Have you had cases in your experience where statements of average past profits have been expressed in a misleading way?—Yes, I regret to say we have, because once a member of our own Society admitted a statement of that kind before our Committee. Unfortunately I am afraid that outside the two bodies, both the Chartered and the Incorporated Accountants, this practice is not so clearly understood. Most of our members would know at once that they would be brought before the Disciplinary Committee if they were to make such a misleading statement, but I thought it all to the good that it should be particularly prohibited in company law rather than that it should be left to the two bodies to take care of their members. But, unfortunately, the present state of the profession is, as you know, that anybody can practice as a professional accountant, and I think some such statement in the Companies Act would be of advantage.

How do you propose to define the basis which should be indicated or how would it be done in practice?—It is simply this, that I have seen on many occasions a statement in a prospectus that the profits of a company upon the average of the past five years amounted to so much, and, as a matter of fact, if those figures were investigated you would find that the latter years showed losses and the earlier years profits, and in that way the public is misled into believing that they are investing in a really substantial company.

Of course the word "average" is really the governing word in your statement?—Yes, and I think I will go further and say it is not part of the duty of an auditor to deal with estimates in any shape or form; his business is to deal with facts and facts alone.

Is not it usual for auditors to give estimates?—No. I regard it as desirable that the Act should deal with it rather than leave it to our two professional bodies to bring their members before the Disciplinary Committee. That is one of the matters which I suggest in my recommendation at a later

stage; if there should be auditors of public companies there would not be any necessity for such a thing.

With regard to the minimum subscription on page 5, I have noted that you would rather leave the law as it is?—Yes. I have no actual experience of any harm arising from that clause.

You have heard of cases, no doubt, where the money of subscribers has been frittered away in paying preliminary expenses and underwriters' commission and that sort of thing?—Quite, and yet I can see no means of avoiding that. From the legal point of view it may be possible for a gentleman learned in the law to devise some such scheme, but I can make no practical suggestion on the subject.

At any rate, you do not think that sufficient abuses have arisen within your experience or the experience of the Society to justify any legislation on the subject?—I agree.

Then, going on to floating charges, you say: "All charges created or mortgages effected should be shown on the face of the balance-sheet." What do you mean by that?—I mean this, that where there is a balance-sheet you have an asset, you have a freehold property on one side of the account; then on the other side of the account would appear the mortgage on that property, and I would make it necessary that on the credit side of the account it should be clearly stated that the mortgages are upon the security of the freehold property, as stated on the assets side. I have found, amongst the leading firms of accountants with large experience, that such cases would not in fact exist and in fact occur, but yet I have come across in my experience many cases where, from a want of experience, the mortgages and charges upon the various assets have not been clearly stated on the face of the balance-sheet, and, as a result, persons giving credit have found, when trouble arose, that all the assets were hypothecated. I therefore regard this practice as a general practice amongst the leading firms, but once more I say I think, as we have many professional accountants who are not limited to the two bodies, it would be altogether desirable if it could be made clear and beyond question of doubt that it is the duty of the auditor to state clearly on the face of the balance-sheet when any of the assets are in any way mortgaged or charged.

With regard to preferential payments, I notice you are really quarrelling with the word "forthwith" in sect. 107?—Yes, and of course it puts the receiver in rather a dangerous position; I mean to say in such a case, where there is outstanding £50,000 excess profits duty, at the present moment he is placed in a very difficult position, and, as I understand, the Courts have no power to assist him, in view of sect. 107.

You mention excess profits duty, and that is probably the typical case; I mean ordinary preferential charges in the ordinary case are scarcely worth troubling about?—In income tax cases?

Yes, in income tax cases. I suppose the habit of companies to run up arrears of income tax is rather a recent phenomenon, is it not?—Yes.

Do you think it is anything more than a temporary trouble?—Yes, I do, unless, of course, the Chancellor of the Exchequer can make provision to collect immediately these preferential charges. I have no confidence in that direction. Of course, very often these preferential charges are the subject of litigation and of necessity are held over for lengthy periods.

(Mr. Stiebel): We have it now and again; in fact, I have to-morrow one of these cases where the estate has turned out very badly, and apart from income tax the preferential payments cannot be paid in full.

(The Chairman): Do you come across cases where the receiver by the direction of sect. 107 is forced to sacrifice the assets in order to pay the creditors forthwith?—Yes, and even in a worse position, where he has got a good business and he finds it difficult to raise the money even for the purpose of carrying it on.

Of course the result may be, may not it, if you interfere with the rights of the preferential creditors, that you will really be empowering the receiver to do a gamble with the assets for the benefit of the non-preferential creditors?—I have put it very clearly "with the permission of the Court," you see, and in any such case the receiver would have to give a very good reason to the Court before any such permission was granted.

I notice you recommend that directors' remuneration should be shown separately in the profit and loss account, including tax. Does that apply to managing directors as well as to directors?—No. I do not class managing directors in the same category; I think it would be very undesirable.

One can see the undesirability of it from one point of view, and it would be this, that possibly competitors, if they knew what a particularly good man was being paid, might be able to come along and offer him something higher and tempt him away?—That is the sort of thing that happens.

That is the sort of thing that happens in business?—Yes. We know the importance of the duties of managing director and how even highly paid managing directors, such as those of insurance institutions, and so on, are the very foundation of the success of those companies, and I think it is altogether undesirable in their case.

I should just like to see how it strikes you, because on the other side you would expect that the shareholders who are engaging these highly paid gentlemen would feel that they were at any rate entitled to know what those gentlemen were being paid for their services. That is the argument on the other side. I was wondering if you thought there were any means by which the two points of view could be reconciled.—I can only say, speaking from a large experience on this question, that I have seen managing directors whose remuneration has been a very high one indeed, a remuneration based on a fixed salary and profits, but I have never yet come across a case of an ordinary commercial man where the manager was being paid an unfair remuneration,

Have you ever come across cases where shareholders, possibly in private companies and not in public companies, have been trying to find out what it was that their managing directors were being paid and have not been able to do so?—No, that has not come within my experience. I think the shareholders must trust their board of directors. If they do not trust their board in a matter of this kind, they have full power to alter their board of directors.

It may be the case, may it not, in private companies, where they are drawing remuneration which they conceal from the company? There the unfortunate person who is in a minority is helpless, is he not?—Yes, certainly.

He may find the company is being bled by the board and managing director, and he cannot find out what is paid to him. You have not come across that class of case?—No, I have not.

Would you see any objection to empowering the holders of a certain percentage of the issued share capital to have the right to obtain that information?—No.

On a requisition by, say, 10 per cent.?—I can see no objection to that.

Without putting it in the accounts?—Quite.

That if 10 per cent. of the shareholders thought the information they wanted was proper they would be entitled as a matter of right to get it?—I can see no objection.

That would prevent the case happening, for instance, of a competitor taking a few shares simply for the purpose of finding out?—Yes, quite.

It is only a suggestion of mine, and I wanted to see how it would strike you. I will not deal with the form of accounts, which is very interesting, because I do not feel competent to deal with it; I will leave it to Sir James Martin to question you about that. Would you wish in the case of public companies that the filed accounts should be the complete balance-sheet?—The audited balance-sheet, yes.

What would you do about the profit and loss item in that?—The audited balance-sheet in the case of public companies is always issued in a contracted form; it is issued to the shareholders, and there is no reason why the published accounts should not be filed.

If there is anything to be found out by competitors in the balance-sheet of a public company they can always get it?—I think the directors will invariably take the necessary precautions in regard to that.

By comparing the balance-sheets of the different years you can find out what profits the company was making. Could not you do that by comparing the figure for the balancing item?—It would be a difficult matter. As a matter of fact, you can by the balance-sheet alone, after accounting for the dividends paid away, of course, ascertain the profits of the company from year to year. But I can see no objection to that.

On page 11 I notice you refer in (*f*) to secret reserves, and you say that "from a purely commercial point of view secret reserves are a benefit, provided always they are not used for the deliberate manipulation of profits and/or for unjustifiable dealings in shares by the directors." Is that a class of thing which in your experience happens at all frequently? I have never known such a case.

You have never known a case in which directors with their interior knowledge have been able to make profits by dealing in shares?—That would be to go too far. By reason of the secret reserves I have never known a case of directors, having knowledge of the secret reserves existing in the companies, making profits from that knowledge.

Of course it would not necessarily come to your knowledge, because they might go and take them up on the market?—They might; that is always possible; but I think the information would escape somehow. My experience of secret reserves has been that they have been administered faithfully and well, and particularly in times of commercial crisis they have been of the utmost value. If you refer to the case of banks, within the last few years we all know that banks made very large bad debts—it is common knowledge—and there is no doubt in my own mind that the secret reserves were of great value, and also it applies equally to such institutions as insurance companies. I have seen a good deal of secret reserves, and I have never known them to be administered unfaithfully, and I have known them to be of the very greatest advantage, not only to the institutions themselves, but also to the community at large.

There, again, it is to a certain extent a psychological point, is it not?—Yes, certainly.

None the less, it is important?—Quite.

On page 12 you deal with the question of the inspection of securities, and you say you wish to make it compulsory for auditors to inspect the securities wherever they are able to do so?—Yes.

Would you limit the certificate to the certificate of a bank?—Yes, I should limit it to the certificate of a bank strictly, and not only a bank, but that bank should be a well known bank and a bank upon the authorised list prepared by the Board of Trade. I have in mind institutions which call themselves banks and which are not, in the proper sense of the word, banks. That is particularly prevalent in America, and unless some such provision is made—and I qualify that statement to the banks I have referred to—I think it would be wrong for an auditor of a company to accept the certificate of a bank.

With regard to the question of loans to officers of the company, in practice do auditors make any reference to those matters in their reports or in their accounts?—They do. In the audit either a Chartered or an Incorporated Accountant would of necessity go to the directors and insist that their loans to their officers should be shown separately, and if they were not shown separately then they would refer to them in their auditors' certificate. Normally the directors would meet the auditors in that way.

Have you ever heard of cases where an auditor who did not feel very strong had been bluffed out of it, so to speak?—There have been cases of exceedingly weak auditors who are dominated by some powerful personality.

You think this would strengthen the hands of people like that?—Undoubtedly, because the auditor would simply refer to the Act and there would be no further difficulty.

Does this apply to secured as well as unsecured loans?—Yes.

If you draw a distinction, the auditor might be in a difficulty, because he would not know what the security was worth?—Quite.

It might be shares in some private company, or something of that kind, which he had no means of valuing?—Quite.

Would you exempt banks—because in regard to banks it has been suggested to us they are in a special position, because lending money is one of their jobs and there is no reason why they should not lend it to an officer or a director, just the same as they would to you or to me, if we could persuade them to do it? Is not it really the loan which is not in the ordinary course of the company's business which you want to hit?—Yes, I quite agree. It is the loan which is not in the ordinary course of the company's business that I wish to hit, but at the same time if directors of companies were to borrow large sums of money I would say that I would not except banks, because of this very fact, that the director of a bank is placed in the position more or less of a trustee—he is at least a *quasi* trustee—and I do not think that a bank director should borrow money from his own bank. If he desires to borrow money it is always competent for him to go to some other bank and he would not in any way prejudice his position, because he would get equally satisfactory terms, and I can see no reason why even a director of a bank should be placed in any special position in this regard.

Of course, banks as a rule have very large boards, and presumably the board would know if one of their fellow directors was borrowing larger sums than he ought to borrow?—It is very difficult. If you take all the loans, which run, as we know, up to £100,000,000 and more—the number is simply vast—I can imagine the bank manager being placed in a difficult situation with one of the directors from the head office of the bank, and it might be an altogether undesirable situation.

(Sir James Martin): I should like to put it to you that there are cases of merchants in the City of London who are borrowing on security and it is part of their everyday business?—Yes.

Would not it preclude those firms of merchants, where they have a partner on the board, from doing any business with their own bankers?—Where they have a partner in the bank?

Yes; there are several firms of merchants who have partners on the board, and those partners are acceptable as bank

directors because of the large amount of business they control, and if your proposal were carried into effect those partners could not do any business with the bank?—With that particular bank. I think in the case of a partnership you would have a number of persons, and the director himself would only be one of a partnership and there would be no objection in that case.

(Mr. Mortimer): You would restrict it to persons?—Yes, to persons.

(Sir James Martin): Because otherwise you cut out a lot of remunerative business?—I have only in mind personal matters.

(Mr. Stiebel): Would not a director who went to borrow from another bank be thought to be behaving very badly?—I do not think so; really they are in a position of trust. Perhaps it requires a good deal of consideration as to the limitation with regard to banks, but on the face of it I find it difficult to distinguish between the director of a bank and a director of any other institution.

(The Chairman): You could have pointed out that on previous occasions, cases have been mentioned of banks in the past which have been brought down owing to the excessive drawings of directors. That is probably the case with small banks, but does not apply now with the large banks. It would be difficult for a director borrowing from a joint stock bank nowadays; it would be a drop in the ocean, would it not, even if he did borrow a large sum and did not pay it back?—Quite.

Referring to page 12, you say you wish to have auditors exempted from the consequences of common law negligence by a clause in the Articles?—I would place them in the same position really as the directors, for this reason, that auditors have carried out their duties with the utmost faithfulness and with the greatest skill, but unfortunately, I believe it is common knowledge that auditors have been the subject in the past of very unfair attacks. They arise in this sort of way, that some person may by cunning devices defraud a company, and then the first thing the guarantee society, for instance, may do, which may be guaranteeing that company, is to attack the auditor immediately. It is a very well known fact that many firms of auditors have been victimised in that way, and, rather than face a public trial of that sort, where they would be at least accused of negligence, they have paid, and I am rather afraid that, where cases are brought, it has been the practice for legal advisers even to say: "Well, yes, attack the auditors and they will pay rather than face the position of a public trial." And even there is the suggestion that they have not carried out their duties properly. My own experience is that auditors have carried out their duties in the past faithfully, and they are entitled to the same measure of protection as the directors are at the present time allowed.

What you are saying one appreciates may amount to what might be called blackmail?—Yes, it is blackmail.

But it is a thing which every professional man is open to, is it not?—I quite agree.

With regard to doctors, for instance, one reads cases in the papers very frequently where one cannot help thinking that the real thing at the bottom of it was blackmail; and solicitors sometimes have cases brought against them. Is not it one of the risks of the professional man?—It is one of the risks of the professional man, and I should like to pursue the question of the doctor to which you referred. It will be doubtless well within your knowledge that many years ago doctors were regularly victimised into such a position that it became absolutely intolerable, and the Medical Association set up a special committee for the express purpose of defending doctors, and that is in existence to-day, and if a wrong or an improper charge is brought against a medical man that will at once be taken up by the Medical Council. The result of that has been that these insistent cases of blackmail against doctors have all been put a stop to. At present I think the auditor is in the same position. Probably you, Sir, can sympathise to a certain extent, because doubtless in your wide experience even the cases I mentioned to you have probably come before you My view is this, that auditors do carry out their duties with skill and faithfulness.

Would not the solution really be that the auditors should defend themselves, as doctors do? The doctors have not been forced into the position of making special contracts with their patients protecting them from liability and that sort of thing?—I quite agree, but the accountants' profession is not in any way organised. You have the two great bodies, and you have a multitude of other bodies, and, in addition to all that, any person without any qualification at all can call himself a professional accountant, and, until the law gives us some measure of protection similar to that in the medical profession, any hope of protection from the recognised institutions, I am afraid, is hopeless.

This statement is, as I say, so clearly put that there is very little more that I want to ask you, but I will just ask one question on voluntary windings up. Are you generally satisfied, in the case of voluntary windings up, that the creditors really get sufficient control?—Yes. In the case of a voluntary winding up I am suggesting here that a committee should be formed of both creditors and members of the company.

Would you be in favour of some scheme which would really effectively give the creditors, as distinct from the shareholders, the right of appointing a voluntary liquidator? Do you think it is possible to devise a scheme of that kind?—I think it would be a matter of extreme difficulty, and my experience is that, with regard to voluntary liquidations, they are carried out at the present time with very great efficiency, and particularly so where you have a committee appointed of the shareholders themselves to advise the liquidator.

Of course, one knows of cases where voluntary windings up have been gone in for on the ground that it is easier to appoint a friendly liquidator; I think that is the sort of thing that one has seen in practice. Do you think there is anything in that?—For that precise reason I am suggesting that in a voluntary liquidation you should have a committee of both shareholders and creditors.

Do you think that committees are really helpful; are not they a nuisance and difficult to get together, especially in the case of small companies?—I find them a great benefit; I always ask for them as a matter of course. Not only that, but they have an intimate experience of the particular business and can give me useful advice; also I can rely upon them, and I am losing a certain amount of my responsibility by placing matters before them.

(Mr. Stiebel): I do not know whether you mean an advisory committee like that instituted under sect. 188 of the Act, or a committee with powers conferred upon it as in a compulsory liquidation?—I have not considered that.

They are two different things?—Yes, they are. I had in mind an advisory committee.

(Mr. Eddison): On page five of your memorandum you say: "It is suggested that all offers for sale should comply with the law as to prospectuses making directors and/or promoters responsible in such cases"?—Yes.

Have you considered the effect of sect 81, sub-sect. (6), which reads: "In the event of non-compliance with any of the requirements of this section, a director or other person

responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that (*a*) as regards any matter not disclosed, he was not cognisant thereof"? In the case of an offer for sale which is made not by the company itself but by an issuing house, could not the offerer always get out of it by saying: "I was not cognisant of this"?—I think so, and for that reason these offers for sale, I think, should come under just the same regulations as prospectuses at the present time; they should all be brought into one group.

But is not there the difficulty which I have pointed out, that, if you make them come under the same provision as prospectuses, then they come under the exemption of sect. 81 sub-sect. (6)?—Yes.

(The CHAIRMAN): Is not it possibly due to the rather concise way in which the thing is worded? I do not suppose the Society wants to be tied down to the exact wording of that, but substantially that is the sort of thing you desire?—Yes, it is the sort of thing we desire, in principle, I would say.

(Mr. EDDISON): Another point on page five, with regard to mortgages and charges. There you propose that the Registrar should have to give a certificate to the auditors?—Yes.

I am not quite clear what that certificate is to show. Is it to be all mortgages outstanding, or all registered mortgages?—Yes. Of course, as you know, at present each limited company has to keep a list of registered mortgages. In practice we find those mortgages are kept very badly, very often inefficiently, and sometimes, through want of care, items are actually left out, and I regard the necessity of stating on the face of the balance-sheet all charges that may have arisen upon assets as a matter of great importance, and if the Registrar of Joint Stock Companies would give a certificate in the same way as you get a certificate with regard to where a ship is registered at the port of entry, where we always get a certificate from the registering officer, it would be an easy matter for the Registrar of Joint Stock Companies to give it in the case of auditors; the auditors could then examine that with the register of mortgages to see that it was all in order, and could make quite certain that all outstanding mortgages appeared on the face of the balance-sheet.

Of course the Registrar will not always know that, because at present there is no compulsion on the company to file a memorandum of satisfaction?—No, that is so.

The charge may have been satisfied and yet the memorandum has not been filed with the Registrar?—Yes, that is so. That is a weakness, and the result of that would be that, if the auditor got a certificate including mortgages, of course, which had already been paid off, he would at once go to the directors and insist that they should all be included. They would immediately say: "No, we have paid them off," and they would correct the list and put it in order, so I do not think in practice you would find any difficulty there.

But you want this certificate from the Registrar in order to give you an additional check, to check the company's own register?—That is it. I attach great importance to the balance-sheet showing on the face of it all mortgages and charges.

My next point is on page 10. There you make a suggestion that you should have a sliding scale based on the number of shareholders?—Yes.

Do you not think that would be rather a cumbersome procedure? I was going to ask you whether you thought the same object might not be met providing, say, that the annual return should be made up to the day before the annual general meeting, and that the company should have, say, a month to write it up (instead of the fourteenth day after the meeting and then having a further seven days). Would not that rather meet your point?—Yes, I think so. Of course, as you are well aware, as a result of these immense combines which are taking place it is an impossible undertaking.

I think the sliding scale would probably be a rather complicated way of dealing with the matter?—Certainly; that would quite meet my point.

There is only one other point. At the foot of page 15 you discuss the question of sect. 212; you suggest a period of two years?—Yes.

Then you say on that: "If, however, in the opinion of the Committee this amendment is insufficient to meet the case, then the power to issue debentures should be taken away from private companies altogether." Do you think the commercial community would agree to a proposal of that kind?—I should like to say on that subject that I am not at all wedded to either of these two suggestions, but I do suggest that an evil has been proved to exist. My colleague, Mr. Morgan, gave evidence before the Bankruptcy Commission showing that in the matter of mortgages the greatest evils had arisen and there is a crying necessity for some remedy. Not being a legal man, I hardly dare suggest one, but I do put it forward that something should be done. I am not wedded to this particular period of two years, but I suggest that the gentlemen learned in the law should consider the matter and formulate some remedy for the evil which exists and which is a matter of very great importance.

We have had a suggestion on the line of extending the period, and I think most people who have made the suggestion have suggested one year.—Perhaps that would meet the case, but my suggestion is two years. I feel rather acutely on the subject, and I felt that stringent measures of some sort were necessary. I am afraid that two years is perhaps rather a long period, but any measures which, in the opinion of this Committee, will meet this crying evil which exists is really what I would suggest.

Two years might be an obstacle in the way of perfectly legitimate business, I should have thought?—Yes.

(Sir JAMES MARTIN): Being in receipt myself of some director's fees free of tax, I do not want to quarrel with you over that matter, but, on the other hand, as I signed the Wrenbury Report I should like to put this to you, whether you think any exception can be taken to this recommendation of the Wrenbury Committee: "The payments which the directors receive should be of an amount openly stated and plainly known, without any necessity of computation, to every member of the company." Do you not think that is most admirable?—I do think it is most admirable, and may I point out that I have already in my memorandum suggested the same thing? I have stated that all remuneration of directors should be shown clearly and distinctly on the face of the profit and loss account.

Then you mean by your answer that in showing the remuneration you would add on the tax?—Certainly, it is part of their remuneration.

Then you would make a computation for that?—I should simply add the amount drawn by the director to the amount paid on his behalf in respect of income tax, and put the two together.

I believe Lord Wrenbury gave his opinion—I am afraid to quote legal opinions in the presence of the Chairman—I believe he said if the amount was voted free of income tax it might be held to include super tax?—Yes.

Have you ever heard of a director who claimed super tax as well as income tax?—In my experience I have never seen it actually carried into practice. It is a very very difficult thing to compute, in the first place, but it has been suggested in a

number of boards where I have never seen the thing actually carried out.

I think you and I are agreed about this, that every shareholder is entitled to know what his directors receive?—Yes, I entirely agree.

With regard to accounts, do you think it would be an improvement in the Companies Act if there could be laid down the nature of the books of account to be kept? I will put it roughly that books of account should be kept by every company, so as properly to disclose the company's trading and financial transactions?—Certainly.

I am not suggesting that as a formal recommendation, but I am putting it to you to give you an idea of what is in my mind.—Yes, I am in favour of that, and also under the Bankruptcy Act it has been dealt with in that way.

The Bankruptcy Committee of the Board of Trade have made a recommendation, but there is nothing in the Companies Act, so far as I know, which lays down that books of account should be kept.—I think it is a very good suggestion.

Are you opposed to any standardised form of accounts?—Yes, with regret I am opposed to it. With regret I am compelled to come to that conclusion; otherwise, from the statistical point of view and from the point of view of the public I think it would be very valuable indeed, but from the practical commercial man's point of view I am afraid it is not a practical suggestion at the present time.

I will not go into it, although Sir Josiah Stamp has stated that accountants have never made any contributions towards accountancy science, or something of that sort. You are not in favour, I take it, of the aggregate balance-sheet?—No, I am not.

There is a recommendation of yours with regard to it, I think, in your proof?—Yes, I think that covers the situation.

You say: "As regards investments in other companies, the shares of which are not quoted on the Stock Exchange, in the valuation of such securities the directors should take into consideration all losses sustained by such companies and all relevant circumstances"?—Precisely.

You feel that if considerations like that are given effect to it will be of value?—That is precisely the reason for the insertion of that clause.

We should get a balance-sheet which would be intelligible to the shareholders and which would give the necessary information?—Yes, precisely, a correct statement of the affairs of the company.

Further, are you in favour of the filing of the actual balance-sheet?—Yes.

And not a statement in the form of a balance-sheet?—Yes.

I think the Chairman dealt with that?—Yes, that is so.

I want to ask you a question about the verification of securities. Do you not think it is dangerous to make that a part of the auditor's duty? Why do you want it?—It is because I regard it, I will not say as the most important duty, but as one of the most important of his duties; and not only that, but I believe, in the very rare cases which have occurred where auditors have failed, had they carried out their duties in this fashion the situation would have been saved. I quite agree that I would not suggest that one should legislate for an evil which is so rare in the ordinary course, but once more I should like to call your attention to the fact that we have the two great bodies of accountants and many many others, and, in order to enable us to get a proper status, really some such regulations seem to me at least desirable.

I put it to you that accountants have a professional status, and that sect. 113 of the Companies Act lays down the duties of auditors?—Yes, it does.

In a very excellent manner?—Quite: but, on the other hand, it does not lay down in any manner at all who the auditor shall be.

I quite agree, but that is quite another question, is it not, which is dealt with in another part of your evidence? I do not ask you to go on to that, but I am just for the moment asking: Why emphasise the duties of auditors in respect of one thing and one thing only, when many of our great trading companies may have no securities whatever to inspect?—Of course, our great financial companies, such as our insurance companies and all classes of banks and other institutions, hold vast bodies of securities, and indeed in all our trust accounts where auditors deal with them it is at the very root of the position.

I agree with regard to banking, insurance and trust accounts, but my point is that, in emphasising one part of an auditor's duty, we shall distract attention from other parts of an auditor's duty which are equally important?—Yes, there are many other duties of equal importance, I agree.

Then there is one more point; you suggest that the unfortunate auditor should have to attend meetings of the directors when the accounts of the company are ready for presentation?—Quite.

You agree with me, do you not, that the accounts of a company are the directors' accounts?—Yes, certainly.

And the directors should have those accounts made up on their own behalf?—Yes.

Why should the auditor have to go to the meeting?—For this reason, that the auditor is a person highly skilled in the accounts; he is extremely well qualified to explain accounts to boards of directors.

They are their accounts?—Yes, they are their accounts, but I think it is all to the good of commercial practice that auditors should attend the board meetings and should submit themselves to the examination of directors on all subjects arising out of their accounts, and I particularly had in mind when I made the suggestion the case, shall I say—I do not know whether I should particularise a notorious case that is in all our minds—where, had the auditor attended at the board meetings and met the directors and they had explained the balance-sheet to him, I think the troubles of the situation would not have arisen. In my own practice I must confess I do attend the board meetings. I find that my presence is welcomed and that I am in a position to give the directors a lot of valuable information, and the directors also seem to appreciate my presence and the information I am in a position to place at their disposal. I think it is to the good of the auditor and to the good of the community at large.

Is it not the fact that, where auditors have failed in their duties, they have been overborne in practically every case by a person of superior dominating power?—Quite.

Of whom at the time there was no suspicion. Unfortunately I am old enough to be able to go right back to the *London and General Bank* case.—Quite.

Where, I believe, the auditor had to go to gaol?—Yes, he did.

But he was regarded as a very reputable person and everybody was very sorry for him?—Yes.

The auditor of the shareholders is to go down and meet the whole board and have the collective opinions of the board shot at him?—Had the auditor in the *London and General Bank* case attended in the way I have explained and attended on the whole board it would possibly have saved the situation.

I think what happened with regard to the auditor in that case was that he made a report to the directors and the chairman said: "Do not put this report before the shareholders; I will put it before them in my speech," and when the meeting took place the chairman never made any allusion to it whatever, and the unfortunate auditor in a funk did not dare to rise from his seat to tell the shareholders the truth. I must not take up too much time about this, but what I feel is that if an auditor is in any way a nervous individual—he may be a thoroughly good man in every other way—you do not help him very much by sending him into the lions' den?—Personally I like the lions' den.

I am trying to help a man who has not your personality.—It is because I felt that the very case which you stated so ably with regard to the dominating personality was true; it does happen that boards of directors are dominated sometimes by one man, and, if you have an auditor who can go and see the directors and explain the balance-sheet without fear and favour, I think that that position of the dominating man will hardly exist, so far as the balance-sheet is concerned.

But you are rather assuming, are you not, that the auditor knows all about the balance-sheet before he has audited it?—No. I must not be misunderstood. My practice with regard to that is this, and I think it is very customary, that the auditor completes his balance-sheet and his audit; then, having completed his audit, he sends it forward to the board of directors, who adopt the accounts, and then, when the directors have adopted the accounts, the auditor signs his certificate, so that when I attend a board of directors I have completed my audit entirely and I am in the position to give any director the fullest information on the subject, and indeed they ask me for it. But it is not a vital point.

(Mr. MORTIMER): With regard to the Registrar's certificate, would it not be necessary that all mortgages should be registered, and not only those on the company's property?—Yes.

You would recommend that, would you not?—Yes, certainly.

Even if the company has bought an equity of redemption the mortgage should be noted on the register?—Yes.

On page 2, with regard to preliminary expenses, you say: "Companies should be compelled to write off all preliminary expenses." That is provided they have made profits?—Yes, I agree. It is simply a fictitious asset, and I think all our finance should be directed towards getting rid of fictitious assets as quickly as possible.

I wanted to know one thing with regard to the discipline which you exercise over the average profits. Do you only object if one of the years shows a loss?—No.

I mean if you had five years more or less even, without anything else serious, there would be no objection in your mind to giving the average?—Yes, there would be an objection; I should not allow it.

You would not allow it?—No. They must put down those five years every year and show the average. That is the only straightforward way of handling the matter.

(Mr. STIEBEL): I should like to ask you one or two questions. With regard to preference shares, would you alter the position of existing preference shares which have not got their rights secured by the Memorandum?—No. I would not suggest legislation which would go back on an existing contract.

On page 3 of your memorandum you state that in certain cases the sanction of the Court should not be necessary to a reduction of capital?—Yes, quite.

Is that consistent with your suggestions on page 11, I think it is, of the Memorandum, that a reserve fund should be set aside and that a company should not pay dividends if it has made losses?—That is with regard to the French Company Law.

Are the two suggestions consistent? You say: "They have been able to draw upon secret reserves to meet special losses"?—I think that is perfectly consistent. Where you have a large debit to profit and loss, I think it is a perfectly desirable thing to do, just in the same way as in ordinary practice where you have a large debit to profit and loss you would at once write that off your capital. I am stating that in the case of a large limited liability company, where you have a large debit to profit and loss which is not represented by any asset at all, it should be competent, on an ordinary resolution of the shareholders, to wipe out the debit to profit and loss on the assets side and reduce the capital on the liability side in a corresponding fashion. So that you see there you would have all the machinery in those two classes, quite simple machinery, without any necessity for going to the Court, for putting the company in a position to declare a dividend.

So that you could pay a dividend after you had made losses if you had corrected your accounts?—Yes, if you had corrected your accounts and put the thing in a proper position.

That cuts down the clause on page 11 a good deal?—At the present time, under that clause at the end of page 11, as the law stands a company may pay dividends out of current income, regardless of the fact that there is a very heavy debit to profit and loss.

And now they are going to be allowed to write it off?—If their balance-sheet is clean.

When you talk of making good past loss, do you include in that loss by way of depreciation, say leaseholds running out and so on?—I certainly should, because, of course, no balance-sheet, in my judgment, would be a proper one unless the leaseholds were properly provided for.

There is only one other point I want to ask you about. You made various suggestions as to debentures of private companies: Is it possible to keep these things to private companies? Because, after all, it is quite easy to form a public company with a few members, and you would always be able to get out of any such provisions if you wanted to?—Yes, they could easily convert themselves from a private company to a public company. I had in mind the case where frauds have taken place and when the company went into liquidation it was found that debentures had been issued covering the whole of the assets. That was the only case I had in my mind.

The only thing was that I did not want to shift those companies from private companies to public companies.—You see, if you make them, they will have to file their balance-sheets and there will be a certain protection at least. As I explained to the Chairman, I am not wedded to these two forms, and I only suggest that here is an evil and it is only for the gentlemen learned in the law to find an appropriate way out.

(The CHAIRMAN): The Committee is very much indebted to you and to the Society for your assistance.

Evidence submitted on behalf of the Institute of Chartered Accountants in England and Wales by Mr. Sidney Pears, F.C.A.

1.—CONSTITUTION AND INCORPORATION.

1.—(*a*) *Form and Contents of Memorandum and Articles of Association.*

This appears to be a legal matter, and in view of the recommendations in paragraph 55 of the Report of the Company Law Amendment Committee 1918, which the Council adopt, they suggest that an amending section is

required providing that the Memorandum of Association be restricted to the objects of the company. If this is done it might be desirable for the company to be able to extend its objects with the leave of the Court, provided the application of the company is supported by a special resolution.

1.—(*b*) *Restrictions on Name of Company.*

At present upon the reconstruction of a company the new company is not permitted under sect. 81 of the Companies (Consolidation) Act, 1908, to be registered with the name of the old, which may be desirable, until the old company is in liquidation. The Council suggest that provision might be made for the new company to be registered with the name of the old company if the consent of the old company is obtained, such registration being upon the footing that the new company be subject to penalties if it does not alter its name within a specified period in the event of the old company not going into liquidation.

The use of the words "British National" or other such name should be left to the discretion of the Registrar; also the use of the word "Bank."

1.—(*c*) *Power of a Company to Alter:—*

(1) Its objects.

(2) Other provisions in its Memorandum.

See Note 1 (*a*).

1.—(*d*) *Effect of Certificate of Incorporation.*

This appears to be a legal matter.

1.—(*e*) *Preliminary Expenses.*

The Council have no suggestion to make except that in the case where, on the formation of a company, the prospectus states the amount of expenses, if that sum is exceeded the excess should be paid by the promoters.

2.—Share Capital.

2.—(*a*) *Reduction of Capital.*

In the opinion of the Council the words "and reduced" might be dispensed with.

2.—(*b*) *Issue of Shares at a Discount.*

There is no objection to the principle of issuing shares at a discount, but any discount should be shown on the balance-sheet and annual statement until written off.

The Council does not suggest any definite limit, but would refer to paragraphs 45 and 46 of the Report of the Company Law Amendment Committee, 1918.

2.—(*d*) *Rights of Preference Shareholders.*

All shareholders of a public company to be formed hereafter should have the right to receive or see the annual accounts.

2.—(*e*) *Shares of no Par Value.*

The Council have no suggestion to make. It is understood that if the practice were adopted it would involve such fundamental changes in the existing law that, as suggested in Clause 51 of the Report of the Company Law Amendment Committee, 1918, it should be done by special legislation and not by amending an existing Act.

2.—(*f*) *Distinguishing Number of Shares.*

No alteration is suggested. The company can now create stock in lieu of fully paid shares if considered desirable.

3.—Issues and Offers of Shares and Debentures.

3.—(*a*) *Contents of Prospectus.*

The Council consider that the provisions of sect. 81 suffice.

3.—(*c*) *Offers for Sale, Circulars, Advertisements issued to Comply with Stock Exchange Requirements and other Press Notices.*

The Council is of opinion that the offer or statement in lieu of a prospectus should contain all material information required by an investor.

3.—(*d*) *Statement in Lieu of Prospectus.*

See note to 3 (*b*).

3.—(*e*) *Minimum Subscription.*

The present provision under sect. 81 as to stating the minimum subscription appears to be useless as it can be put at an amount which would practically always enable the company to go to allotment, and it might be desirable to fix it at not less than sufficient shares being subscribed for in cash as would, if paid for at the issue price, provide for:—

(*a*) The cash portion of the purchase price as shown in any contracts of purchase referred to in the prospectus.

(*b*) The amount of working capital (to be stated in the prospectus) considered necessary.

(*c*) The underwriting commissions if payable in cash (to be also stated in the prospectus); and

(*d*) So much of the estimated amount of the preliminary expenses as is not under any contract of purchase made payable by the vendor; the amount of the preliminary expenses and the amount thereof payable out of the proceeds of the issue to be both stated in the prospectus.

3.—(*f*) *Miscellaneous.*

The Council suggest that the amending Act might provide that where allotment letters with renunciation forms attached are issued such letters of renunciation, if stamped with 6d. and signed by the allottee and by the ultimate holder thereof and lodged with the company within the period specified (which should not exceed, say, two months), might be treated by the company as duly stamped transfers in favour of such holder.

4.—Mortgages and Charges.

4.—(*a*) *Registration and Right of Inspection.*

The Council suggest that where a company acquires property subject to an existing mortgage or charge, which, if it were created by the company at the date when the acquisition of the property is completed, would require registration, the company ought to be bound under penalty to register particulars of it within 21 days after such acquisition is completed; but failure to register should not as regards the security on the property, be made void as against the liquidator or any creditor of the company.

It is considered inadvisable to amend sect. 93 so as to necessitate registration of all charges of every kind. Commercial pledges such as result from deposits with bankers of shipping documents, dock warrants and other negotiable instruments must be kept absolutely free from the necessity for registration or business would be seriously interfered with.

Sect. 100 of the Consolidation Act should be amended so as to oblige a company to keep at its registered office its register of mortgages and to enter therein all particulars of floating charges which would require registration under sect. 93, as well as of all specific mortgages and charges.

4.—(*b*) *Floating Charges.*

No change is recommended. Sects. 210 and 212 have substantially stopped the issue of floating securities to secure a fraudulent preference, and intending creditors can ascertain from the Register at Somerset House or from the Register of Mortgages if there is a floating charge in existence.

See also notes *re* 4 (*a*) and 11 (*a*).

5.—Directors.

5.—(*a*) *Qualification Shares.*

No alteration is considered necessary.

It is not desirable to modify the existing law. Shareholders have as a rule the power in their own hands to turn out incapable directors. The law provides for the punishment of

fraud and should not impose restrictions on those who conduct their business honestly with the object of endeavouring to protect from fraud those who will not take ordinary business precautions to protect themselves.

5.—(*b*) *Remuneration including Payment of Fees Free of Tax.*

The Council agree with Clause 61 of the Company Law Amendment Committee, 1918, that directors' fees should not be paid free of income tax (including super tax).

5.—(*c*) *Liability for Negligence and Indemnity Clauses in Articles.*

No change is necessary in view of the provisions of sub-sects. 279 and 281.

5.—(*d*) *Contracts and other Transactions between a Company and its Directors.*

The Council have no suggestions to make. The matter is a domestic one and does not concern the public.

Circumstances may render it desirable for contracts and transactions being entered into and carried out between the company and directors.

6.—ACCOUNTS.

6.—(*a*) *Obligation to Keep and Form.*

There should be an obligation to keep books and accounts. At present this is only by inference without any direct obligation.

The Council suggest that sects. 103, 104 and 105 of Table "A" should be incorporated in the Act.

6.—(*b*) *Form and Contents, including Matters to be Disclosed with a view to Protecting Shareholders or intending Shareholders and Creditors.*

It is not considered possible to prescribe any stereotyped form of balance-sheet and profit and loss account which will be applicable to all companies.

The conditions under which companies carry on their business are so numerous, the nature of the business so varied and the places at which the businesses are carried on so spread over the world that to attempt to prescribe either a statutory form of balance-sheet or what a balance-sheet must disclose or that there should be in addition a profit and loss account is considered likely to do more harm than good.

Shareholders have the remedy to a large extent in their own hands. They can and do ask questions at the annual meetings. The business done by limited companies is, on the whole, transacted by directors and managers, who are honest, and if in some cases they disclose in the published accounts less than some people desire, the absence of detail is in most cases wise and is generally supported by the shareholders. To give in a balance-sheet such detailed information as would afford full protection to creditors might mean the giving of a mass of detail of material value to competitors. The means of protection are largely in the creditors' own hands. If they are not satisfied as to the financial position of the concern they need not give extended credit. Creditors can ascertain as much about the financial position of a company as they can about that of an individual. In many cases want of common business care by the creditor is the chief cause of his loss. It is impossible by legislation to protect fools from their own folly.

6.—(*c*) *Filing.*

The Council suggest that the list of members and summary referred to in sect. 26 (2) should be made up as on the date of the annual meeting and filed within a month, and that sect. 26 (3) should be amended so as to provide that "the statement in the form of a balance-sheet" shall be made up to the same date as the balance-sheet submitted to the annual meeting. They agree with the recommendation in Clause 60 of the Report of the Company Law Amendment Committee, 1918.

6.—(*d*) *Rights of Shareholders to Inspect.*

Leave as at present.

It would be undesirable to give to shareholders any greater right of inspecting companies accounts than they now possess. To give greater rights might enable competitors by becoming shareholders (either directly or through a nominee) to obtain valuable information to the detriment of the company.

6.—(*e*) *Accounts of Holding Companies and their Subsidiaries.*

It is considered undesirable to prescribe by legislation any rule for dealing in the accounts of holding companies with their subsidiaries. The circumstances under which such holdings arise are so varied and the places where such businesses are carried on are in some cases so spread over the world that to lay down any hard and fast rule would do more harm than good.

In the opinion of the Council the form of the balance-sheet should as at present be left to the directors and shareholders. To prepare a consolidated balance-sheet would not show the true position of the company, so long as the subsidiaries are separate entities. If the accounts of subsidiary companies had by legislation to be made up to the same date as the parent company and incorporated in that company's published accounts, by the time the details were received by the parent company for incorporation, the accounts of the parent company would in some cases be ancient history.

The question of whether or not what has been described as the legal balance-sheet should be supplemented by other balance-sheets is a matter entirely for the directors and shareholders.

6.—(*f*) *Secret Reserves.*

Secret reserves or inner reserves are in certain cases desirable and in many cases essential. In the Council's opinion all such reserves should be included in the balance-sheet items, and no company by its Articles should be allowed to contract itself out of this obligation.

If businesses carried on by joint stock companies are to be as successful in the future as in the past, too much disclosure should not be insisted on, and the greatest possible freedom should be allowed to those responsible.

It is always open to the auditors to report to the shareholders any exceptional reserves which are made or written back, or other special matters dealt with in the accounts, if the directors do not disclose them on the face of the accounts, or in their report to the shareholders.

7.—ASCERTAINED AND DIVISIBLE PROFITS, INCLUDING PAYMENT OF DIVIDEND OUT OF CAPITAL.

It is considered undesirable to endeavour to define by statute what are "ascertained and divisible profits" or that there should be any statutory enactment with regard to payment of dividends out of capital.

The Courts have carefully abstained from defining generally as to what are profits of a company, and have left it for each case to be decided on its merits.

8.—AUDITORS.

8.—(*a*) *Rights of Auditors to Demand Information and Inspection.*

No alteration is suggested. The rights of auditors are well understood, and if at any time they are refused information which they feel they are entitled to they should deal with it in their report to the shareholders.

8.—(*b*) *Duties of Auditors with regard to:—*

(i) Inspection of securities, &c.

(ii) Calling the attention of shareholders to matters which it is desirable they should know (such as loans to officers of the company).

(iii) Generally.

The duties of auditors have been defined by the Courts from time to time, and the Institute have no suggestions to make with regard to the above mentioned matters.

To make it obligatory for auditors to inspect all the securities would be imposing a duty upon them which it would in many cases be impossible for them to perform, as securities may be held in all parts of the world and in such numbers that it would not be possible to make a personal inspection within a reasonable time of the accounts being required for submission to the shareholders.

In the case of loans to officers of the company the auditors can always, if they consider it necessary where they are of an exceptional nature, draw attention to the matter in their report if it is not disclosed on the face of the accounts.

The Council suggest that no firm or partner in a firm should be auditor of a public company of which a member of that firm is a director.

The Council suggest that when certificates of profits and balance-sheets are signed by accountants their professional qualifications, if any, should be stated.

8.—(*c*) *Indemnity Clauses in Articles.*

The Council do not suggest an indemnity clause as affecting auditors such as appeared in the Articles of Association of the City Equitable Insurance Company, Limited; but put forward for consideration the following proposal as an alternative.

The question of liability in damages of an auditor for negligence should not be ignored in any inquiry concerning amendments in the Companies Acts. The amount of the penalty is of great importance, and not less is the effect of an adverse judgment on a practitioner's reputation and standing. The latter consequence he must bear; the former may well be considered as requiring and justifying limitations.

Too often, for example, claims are made against auditors for alleged negligence on somewhat shallow foundations and where directors are themselves not free from blame; but rather than face publicity and its consequences, an auditor pays. He might succeed in escaping damages if the issue were contested in the Courts, but the mere fact of being a party to an action for negligence and its possible effect on the public mind towards himself often leads to a compromise or settlement. And large sums have been so paid.

Is it fair, in such circumstances, that the savings of a lifetime should be open to attack, even if an auditor is proved to have been negligent? Should there not be a limit to damages (*cite* shipowners and railways) and this maximum be measured by the audit fee paid by the concern affected multiplied, say, by ten to fifteen?

Opinions may vary on this question and absolute unanimity is perhaps impossible among members of the Institute generally. But it is put forward as being the view of a considerable section of accountants whose opinions carry great weight.

9.—Reorganisation.

(*a*) *Schemes of Arrangement.*

(*b*) *Reconstruction.*

(*c*) *Rights of Minorities.*

(*d*) *Power to make a Compulsory Levy on Shareholders.*

The Council support the recommendation in Clauses 47 and 48 of the Company Law Amendment Committee, 1918, which deals with the above matters.

The Council suggest that sect. 192 of the Consolidation Act should be amended so as to enable a sale to be made under that section to a foreign company as could be done before the Consolidation Act was passed.

10.—Winding-up.

(*a*) *Voluntary.*

(*b*) *Compulsory.*

(*c*) *Under Supervision.*

A liquidator who carries on the business of a company which is in liquidation should be obliged to use the words "in liquidation" after the name of the company.

The Council suggest that in the interests of the trading community the Companies Act as regards execution creditors should be brought into line with the proceedings in bankruptcy; that is to say, execution creditors on whose behalf a sheriff is in possession at the date of the liquidation should not be treated as secured creditors, but that provisions similar to those of sects. 40 and 41 of the Bankruptcy Act should apply, so that a sheriff would have to hold the proceeds and hand them over to a liquidator in compulsory or voluntary liquidation in the latter case as decided by the Court who would have regard to the company's solvency as it affects the general body of creditors.

At the present moment it is open to a company to allow an execution creditor to step in and take the whole of the assets, and this in a company controlled by friends of the particular creditor would defeat the other creditors, as the execution may be at the instance of a relative or creditor.

The Council suggest that the meeting of creditors and contributories of the company to be called under sect. 152 should be called within 21 days of the winding-up order.

In any case in which proceedings have been commenced and are pending for the enforcement of claims against a company's assets by debenture holders, the Council desire to call attention to the delay and inconvenience which arises in practice under Rule 42, whereby such proceedings are automatically transferred from the Chancery Division to the Winding-up Court. The effect is to place the administration of the assets under the control of the Registrar in Companies Winding-up, who is necessarily entirely new to the situation which has arisen by reason of the lapse of time which occurs between the appointment of a receiver and manager and the making of a compulsory winding-up order. By the time such order is made, questions of administration and policy which arise out of the carrying on of a business, often with large ramifications, have been settled before the Master in Chancery to whom the proceedings are assigned. The transference only arises in cases in which a compulsory winding-up order is made and not where voluntary liquidation is the method which has been chosen. In the opinion of the Council, much inconvenience and delay would be avoided if receivership proceedings are continued before the same officials before whom such proceedings are begun.

In a debenture action it frequently occurs that the realisation and distribution of the assets in the hands of the receiver cannot take place until a considerable period after the certificate of the Court in answer to the judgment or order for accounts and inquiries has been completed.

It therefore follows that in the interim a number of changes in the legal ownership of the debentures or debenture stock, whether by death or transfer, frequently takes place.

The method adopted in dealing with and registering such changes varies, and it is believed that the views of certain of the Chancery Masters as to what is correct practice in this regard differ in some degree. The more usual attitude

taken is that any change in the legal ownership of the debentures or stock, as shown in the Masters' certificate, can only be recognised upon an order of the Court being obtained in each instance, for which purpose the parties interested have to take out a special summons and submit evidence as to the change of ownership.

In cases where a lengthy period between the date of the Masters' certificate and distribution is involved or there is an active market in the debenture or debenture stock concerned, considerable inconvenience arises. It is also somewhat of a hardship to the interested parties that they should be put to the trouble and expense of a special application to the Court in order to perfect their title to debentures or stock acquired in circumstances such as are referred to. It is therefore suggested that a rule of the Court might be framed which would enable the receiver to register changes of ownership after the completion of the Masters' certificate, in a manner similar to that provided in the trust deed or debentures. Prior to any distribution of the proceeds of realisation of the security the Masters' certificate would, of course, require to be rectified. For this purpose a summons could be issued by the plaintiffs in the action. An affidavit by the receiver that he had registered specified changes of ownership upon production to him of satisfactory evidence of such changes might, it is suggested, be accepted as justifying an order rectifying the Masters' certificate accordingly.

Where a distribution takes place by the Court in a debenture holders' action the practice is not to call for the debentures for endorsement, whereas in a case where a professional accountant makes the distribution the invariable course is to call for the debentures and endorse the payment thereon. The latter course avoids trouble, particularly when dealings take place, and it is suggested by the Council that a rule be made accordingly when distributions are made by the Court.

It is the practice amongst some of the Masters to authorise the distribution of funds by the receiver to the debenture holders or creditors, as the case may be. This course leads to a more rapid division of the funds than if the Court were to distribute as is often the case. It is suggested that the Rules should be amended.

11.—PRIVATE COMPANIES.

11.—(*a*) *Trading by Individuals under the Name of a Private Company.*

These companies serve a useful purpose. Not only are many family businesses converted into private companies for the purpose of continuity and facility of distribution of assets in case of death of a proprietor, but many are formed for the development of new undertakings.

It might, however, be desirable where private companies are formed to take over an existing business that

(*a*) Any debentures which are issued in connection with the formation of a company or the acquisition of such business shall be postponed to all liabilities to creditors current at the date of their issue except where the debentures are issued for cash which is not provided directly or indirectly by the vendor, and

(*b*) That the vendor of the business shall, if the company goes into liquidation whilst he directly or indirectly owns a controlling interest in the company whether by means of shares, debentures or otherwise, be bound to make good so much of his liability existing at the date when the business is taken over to creditors of the business as the sums received in the liquidation by such creditors are insufficient to pay.

11.—(*b*) *Exemption from Filing Accounts and other Privileges.* The Council feel that although on the one hand the formation of a private company has the advantage of limiting the liability of the proprietor, yet, on the other hand, the disclosure involved by preparing a statement in the form of a balance-sheet under sect. 26 (3) would probably be harmful in a large number of private companies carrying on family or private businesses.

Mr. Sidney Pears, F.C.A., called.

(The CHAIRMAN): I think you are kindly attending to give evidence on behalf of the Institute of Chartered Accountants?—I am.

They have furnished us with a Memorandum and there are one or two matters about which I would like to ask you. I will just pick out the things upon which I want a little more illumination. First of all, on page 2, I would like to ask you something about the words "and reduced." We have had a considerable volume of evidence to the effect that those words not only serve no useful purpose in protecting creditors or intending creditors, but, on the other hand, are sometimes detrimental to the company by giving a false impression as to its position. Do you confirm that?—I think it may give a wrong impression; and what one feels about it is that the Court have permission to do away with the words "and reduced," but between the time of lodging the petition and its coming before the Court you have to use those words.

You wish to see them abolished in the case of a reduction which affects creditors?—Yes; I see no objection to their being left out altogether.

You do not see any distinction between a case where the reduction is one which affects creditors and one where it does not?—No.

I think one suggestion made to us was that in cases where it did not affect creditors it should be done away with altogether, but that in cases where it did affect creditors it should be used only from the date of the order, if the Judge so directed, or something of that kind. That would be under sect. 48, would it not?—You must have the words "and reduced" when the petition is once on.

It is a suggested alteration of the law—that the law might be usefully altered in that way.—By leaving out the words "and reduced"?

Yes, altogether, in a case where creditors are not affected; and in a case where they are affected using them only if the Judge so directs. What do you say to that?—I should prefer to see them left out entirely.

Then I notice that the Institute is in favour of the suggestion of the Committee of 1918 with regard to the issue of shares at a discount. I may take it that they have no further recommendations in that respect to make?—No.

It would be sufficient if shown on the balance-sheet and the annual statement?—Yes.

Until written off, of course.—Yes, until written off. It could not appear afterwards.

May I take it that the Council of the Institute have considered the question of no-par-value shares?—Yes, it was considered, but it was thought to be a matter which many had not much experience of and which would require a good deal of alteration in the law—that it would be a big matter to go into altogether.

So far as your Institute is concerned, was there any evidence before the Council of a demand for shares of this class?—No; no such evidence.

In your personal experience among business men and companies have you heard any demand for it?—No.

With regard to distinguishing numbers on shares. There, again, that no doubt you know is a controversial question,

and no doubt it was discussed and gone into?—Yes, it was discussed, but the Council were influenced to some extent by the feeling of the Stock Exchange that it was a desirable thing to continue; and that, of course, if a company wants to do away with the distinguishing numbers they can turn the shares into stock.

Objections have been suggested to that with regard to the habits of the investing public; that as a general rule, except with regard to certain particular classes of companies, stock is not liked by the investing public?—I do not think it is.

I do not know whether the Council considered this from the point of view of evidence before them, the one way or the other, as to the usefulness of distinguishing numbers. Did they go into that at all in coming to this conclusion, or did they think that merely because the Stock Exchange wanted them kept therefore they would keep them?—It was considered, but it was thought as long as there were distinguishing numbers it might assist in dealing with fraud.

I see. Then I notice with regard to Minimum Subscription on page 3 you make some very interesting recommendations, and you wish to have something of this kind put in the prospectus?—Certainly.

That would involve a statement in the prospectus of the amount required to provide for these matters?—Yes.

And failing the subscription of that amount the company would not be entitled to go to allotment?—Certainly.

Do you see any difficulty in specifying in a prospectus the amount of working capital considered necessary?—No.

You would put the directors under the obligation of forming an estimate and stating it?—Certainly.

Would you impose any sort of liability upon them if their estimate were grossly wrong; because if you merely say they should form an estimate they might form one which suited their purposes?—I have not considered what the penalty should be; but it would be on the statements which they put forward that the shareholders would subscribe, and that is material information for the shareholders to know.

Yes, I quite appreciate that. Of course, if they knowingly put in a false estimate that would undoubtedly be fraud?—Yes.

I do not think I have anything more I want to ask you with regard to this Memorandum now, until I come to page 4. I notice with regard to floating charges you do not recommend any change except that you recommend certain changes in connection with private companies under 11(*a*), which would affect floating charges?—Yes.

But subject to that, you do not think that any change is desirable?—No.

There has been a good deal of suggestion made to us that hardship does occur to ordinary trade creditors in cases where they have, for instance, delivered goods and not been paid for them and then the debenture holder steps in and enforces his charge against the goods and therefore has his security *pro tanto* increased in value, but is of course under no obligation to pay for them. I do not know whether that class of case has come under your notice?—I have very little experience of that. But of course there must always be someone who is the last creditor.

That is a very just observation, if I may say so. But, still, in a case where the goods were supplied before the debenture holder steps in, it might be considered a matter of hardship that the goods should be taken and not paid for, because the security, as I have said, is so much improved.—Yes; but then the holder of a floating charge is not able to do much until something happens.

No; but one has known cases, of course, where the holder of the debenture has bolstered up the company, so to speak, knowing pretty well it was on the rocks, and has gone on bolstering up the company and thereby encouraged the company to trade and incur liabilities to trade creditors and then has stepped in and taken all the assets, leaving the supplier of the goods unpaid. That is not an uncommon thing, is it?—No; but it is rather difficult to make regulations for every event that might happen, is it not?

Yes, I appreciate the difficulty of it. I was only wondering whether the thing had come under your consideration and whether the Council had decided that that class of case either was not sufficiently common to require legislation or was one which could not fairly be legislated against—It was considered, but the decision was not to recommend any change—rather following on the Report of 1918 that there was not sufficient grievance to call for any alteration of the law.

Was the question of extending the three months' period considered at all?—No, I think not.

On the question of floating charges, it is sect. 212.—Within three months of the winding up, you mean?

Yes. It has been suggested to us that three months is really not long enough in a great many cases, because they could often manage to keep the company going for three months, and it would be better to increase the period to even 12 months, which has been suggested. Was it considered by the Council?—No, not specially; but I do not think the Council would see any objection to its being extended. Of course, my evidence now must be taken to be personal, to a great extent.

Yes, I appreciate that. But, at any rate, so far as you know, they would not object to that; but that is really as far as they would go, subject to the special points with regard to private companies?—Yes.

That is as far as they want to go with regard to the alteration of the law in connection with floating charges?—Yes.

Now with regard to the remuneration of directors. I want to ask you one thing on that. Is it the practice in a good many companies not to specify in the accounts the remuneration which directors are receiving?—Yes, it is more general not to show it separately.

One cannot help drawing on one's personal experience in these matters; but you may or may not have come across cases where shareholders, especially in cases where directors or managing directors were paid by commission, have endeavoured to find out what they were getting and have never been able to find out; and it is not stated in the accounts. I do not know whether you have come across that kind of thing at all?—I have come across cases where the question may have been asked at a general meeting, but I do not know that it has been always answered.

Is there any real objection to putting on the face of the accounts what the directors are being paid? Of course, the shareholders would presumably know, if it were a fixed salary; but is there any objection to putting on the accounts what the directors are receiving in the way of commission, in cases where they are paid by commission?—No, I do not see any objection. In some of the cases which come before me the commission part is often shown separately because it comes out of the appropriation of the profits. But not in all cases.

That is not always done?—No.

And the result very often is that a shareholder may look at the accounts and, so far as anything on the accounts would tell him, the managing director may be making £100, or £2,000, or £5,000, and the shareholder would not know what he was getting?—That is so.

You do not see any business objection why that should not be made a compulsory disclosure?—Not for directors' fees.

(Mr. Andrewes-Uthwatt): If the auditors are not satisfied that the amount paid to the directors or managing director is quite in order, do they make a note about it in their report?—Certainly.

That is the invariable practice, is it not?—I think every auditor would do it. If he is not satisfied with anything in the accounts, of course he would report it.

(The Chairman): I was not thinking of a case where a director was not entitled to what he was being paid, because if he were being paid more the auditors would draw attention to it. But assuming a director is getting exactly what he is entitled to—commission on turnover, or on profits, or whatever it may be—the auditors would not find it necessary to put a note in the accounts stating what the exact amount he received was?—No, not if the amount were in order.

It might be mixed up with a lot of other items?—Yes, included in the general expenses.

(The Chairman): That is the class of case of which I was thinking, and not where a payment was excessive, over and above what he was entitled to.

(Mr. Cash): Do your questions relate to directors and to managing directors?

(The Chairman): Yes, to both.

(Mr. Cash): They are two very different things. One knows that the remuneration of managing directors is fixed by the board under the powers of the Articles of Association, in very many cases. (*To the Witness*): Can you express any view as to whether there would be objections by directors and/or managing directors to the disclosure of figures of that sort?—I think a managing director might, certainly.

(The Chairman): Is it not reasonable that the shareholders should know the amount of money they are paying to their servants?—I think it is reasonable for the shareholders to know, but I do not know that it is reasonable to publish it to the competitors of the company. A shareholder could always ask for the information.

But he does not always get it. I do not want to give evidence myself; but many of us know they try to get it but do not get to know.—If the directors do not tell them they can turn out the directors or not re-elect them.

(Mr. Brand): Do you think there would be strong objection from the directors or managing directors themselves?—Yes, I think there might be. I think there would be no ground for not saying what the managing director got.

As an ordinary director's fee, that is rather a different question?—The managing director's remuneration is sometimes in addition to, and sometimes covers, the director's fees; but, of course, the managing director's remuneration does in some cases amount to a very large sum.

(The Chairman): Yes. Take the case of private companies. Would you see any objection there, where there are no accounts filed, to the shareholders being given that information?—I think there would be strong objection in a private company for it to be shown on the accounts.

I want to see what you think is the ground for that objection. After all, the shareholders are the men who employ the managing director; why should they not know what their servant is being paid?—I have a strong objection to its being disclosed in the accounts which are published.

They would not be published in the case of a private company, would they?—No, except if paid for under sect. 113.

I was asking about private companies—whether you would concede to me that such a thing might be desirable in the case of a private company?—I think it would be better not, even with a private company.

I will go on now to 5 (*c*), with regard to indemnity clauses in Articles and liability for negligence of directors—at the bottom of page 4. I am not quite sure whether I understand the answer. Does that mean that you would still leave the position under the company's Articles without any statutory alteration? The question was really directed to this: Whether in view of certain recent decisions it was desirable to prevent the contracting out of the ordinary law of negligence in the case of directors and managing directors; because they do contract out of it at present under the ordinary indemnity clause?—Yes.

The question was really directed to whether that was desirable or not. I do not know whether the Council considered it on those lines; because the answer, by its reference to sects. 279 and 281, rather leads me to think that they read it as asking whether some better or increased indemnity might be given.—No, I do not think that was the view.

Do they wish to leave the law as it stands as laid down in recent cases?—Yes.

(Mr. Cash): Do you mean by that, that you see no objection to the inclusion in Articles of Association of the sort of clause which the Chairman is indicating?

(Mr. Wilton): No director should be responsible for anything unless he was convicted of being fraudulent—that is what it comes to.

(Witness): I do not think we go as far as that. There was one set of Articles, of course, where they were not to be liable except for their own dishonesty.

(The Chairman): You see, it does leave the director of a company which has an Article like that in a very privileged position?—Yes.

(The Chairman): As distinct from other people who are employed under an ordinary contract. I do not know whether I can usefully pursue it, but I shall possibly have something to ask you on it when we come to deal with the point about the auditors.

(Mr. Cash): I do not quite understand the reference to sects. 279 and 281—the relevancy of those sections.

(The Chairman): That is what puzzled me. That is what made me think that the Council thought the question was suggesting a relaxation in the law rather than a tightening up of it; because they refer to sect. 279 and they say that section is sufficient. That section is the one for excusing directors.—Yes, if the Court think desirable, in the circumstances.

Yes; that is what led me to think that they interpreted the question as suggesting the desirability of improving the position of directors rather than tightening it up.—I think that really is the feeling, that in view of that section there is no reason why there should be an indemnity clause such as the one suggested.

Now I understand. Sect. 279 was really a sufficient protection in cases where the common law of negligence might be found to operate too harshly?—Yes.

Now, on page 5, under heading 5 (*d*), I want to ask you a question with regard to contracts and other transactions between a company and its directors. I am not sure whether the question I want to put comes in there, or whether it comes a little lower down. However, I will ask it now, as I have started. You deal with the point on page 8, in the third paragraph, where you say: "In the case of loans to officers of the company the auditors can always, if they consider it necessary where they are of an exceptional nature,

draw attention to the matter in their report if it is not disclosed on the face of the accounts."—Yes.

They can do it, but in point of fact it is always done?—We should do it if there was anything exceptional.

I know.—I cannot answer for other auditors, but I should have thought they would.

You must have come across cases where it has not been done. There is one case which we have in mind very much, where it was not done.—That was a very exceptional case, was it not?

I know; but do you think it would strengthen the hands of auditors, because not all auditors are strong and able to get their own way? Do you think it would strengthen their hands if there were some statutory obligation on them to refer in their report to unsecured loans?—To officers of the company?

Yes. It would be the ordinary thing to refer to it, would it not, if it were anything substantial? Supposing you found that an officer of the company had got an unsecured loan of £10,000 or £20,000?—Yes, I think it would.

If it were a thing out of the ordinary, not merely a sort of drawing against future salary, but a real loan, and there was no adequate security for it, you would consider it was your duty to refer to it in your report?—Certainly. But it is so difficult, when you come to legislate for these matters, not to be harmful in other cases.

I appreciate the danger of that.—And, of course, it is a common thing—it may be the director of a bank. If he wants money it is much more reasonable to go to his own bank than to go to a strange bank.

I think the Committee is quite seised of the special position of banks in this respect. I was rather putting them out of my mind at the moment. Is there any real reason in principle why the shareholders of a company should not know the extent to which their directors—who are their trustees—have been lending themselves out of the company's till cash belonging to the company? Is there anything in principle why the shareholders should not know that? After all, it is their money and the directors have control of it, and they are lending it out of the till to one of their number.—Would that be limited to directors, or officers, or staff? It is the general practice now for banks to lend money to their staffs who buy houses.

Put banks rather on one side for the moment; they are a special case. Take an ordinary trading company; is there any reason why the shareholders should not know whether the directors are lending themselves the shareholders' money without security?—No, I do not think there is.

If you put an agent in control of an estate of yours you would not expect him to lend himself money which he was collecting on your behalf, without either asking your leave or providing security for it. Why should the directors of a company be entitled to do a similar thing without at any rate notifying the shareholders that they are doing it?—I think it is possible that there might be cases where there might be no special reason for its being done. But, on the other hand, there may be good reasons for having it done. But it is difficult to legislate to cover all these cases. There may be cases where it might be very harmful for a company to show that a director had had a loan. You might take a company such as I have heard of, where realisations were taking place and there is no immediate need for the money, to hand it over to, it may be, the chairman for the time being.

Without security?—He was a wealthy man; it did not matter whether he gave security or not.

That is the trouble, when it is lent to a wealthy man and the wealthy man turns out not to be quite so wealthy, and there is a crash. That is the kind of thing which has bulked largely in the public eye, and which has happened.—Yes, it has happened.

Do you really consider that the directors of a company are normally justified, or ever justified, in lending the company's funds to one of their number without security?—No, not without security.

That is what I am rather suggesting. If there is proper security it does not matter whether they lend it to themselves or to someone else?—I see no objection to it being done if the money is lent without security.

I was expressly limiting it to that and excluding banks, where the circumstances are rather different. But in ordinary cases I take it that you now do not see any objection—in fact you think it right—that unsecured loans to officers should be shown in the accounts?—Yes.

(Mr. Harold Brown): Would you extend that to cases where the Articles expressly authorise it?—Public companies?

(Mr. Harold Brown): Any company.

(Mr. Welton): Authorised without security?

(Mr. Harold Brown): Yes. To put it another way. Would you prevent the shareholders contracting out of that section?—No, I do not know why they should not.

Do you think that the shareholders should be absolutely precluded by the law from saying "We do not wish to have this recorded in our balance-sheet"?—To put it in the other way, it should be shown unless there is a resolution of the shareholders that it should not be shown.

That is the point I want to bring out—whether you think it should be shown.—Not if the shareholders do not want it; certainly not.

(Mr. Cash): Would you extend it also to debts due from directors for goods, as distinct from loans?—I do not think debts for goods would come under the same category as loans without security.

One has had experience of directors being supplied with large quantities of goods, with disastrous results to some companies. Why should there not be disclosures as to debts other than loans?—I do not think debts incurred in the ordinary course of business should be disclosed.

(Mr. Andrewes-Uthwatt): That is a real test, whether the transaction is of such a nature that it falls within the ordinary course of business of the company or not—that is the distinction you are drawing?—Yes.

(Mr. Stiebel): In answer to Mr. Harold Brown you said you would allow it if there were a resolution of the company. Do you mean to draw a distinction between that and its being allowed by the Articles of Association? It is brought more to the shareholders' minds in that way, of course.—The difficulty is in altering these regulations after the company is once formed and has carried on business in a particular way; and if you begin to legislate and make something quite different and it is going to affect existing companies, it may act very harshly. That is one of the reasons why one would wish to see as few alterations as possible made in the law.

Then I take it that you do not intend to draw a distinction on that point between what was authorised by a resolution and what is authorised by the Articles of Association?—I think the shareholders must have knowledge of their own partnership deed; and if they do not agree with it they should alter their Articles.

(Mr. Wilton): Of course it is a very vicious thing for any company to allow its directors to receive advances—at least, it may be abused?—Yes, it may be abused; but there may be certain circumstances where there is no harm in it at all.

(Mr. Wilton): My difficulty at the moment is to see why banks should be excluded if there are going to be any regulations laid down.

(Mr. Andrewes-Uthwatt): The witness's distinction about a transaction in the ordinary course of business and one which is not in the ordinary course of business would cover it.

(Mr. Wilton): I have in mind the transactions in connection with the City of Glasgow Bank, where transactions of that kind were responsible to some extent for its failure.

(Witness): Do not all these questions which arise show the difficulty of altering the law?

(The Chairman): But we have to consider it all round. You may take it that the questions put to you are for the purpose of ascertaining your view and do not necessarily imply any decided view at the moment, the one way or the other, on the part of the questioner or of the Committee. But one has to put the other side to you, because cases have occurred where the presence of such a provision would have saved a catastrophe, and therefore it is obviously a matter for investigation as to whether or not it should be done.—But then it comes down very much to this, does it not, that to legislate for isolated cases may be very harmful, or disadvantageous, in many cases?

That is where we want you to help us. That would be an excellent answer in a great many directions, but what we want to be satisfied upon as a matter of evidence is whether or not such legislation would tend to be bad in a great many cases and, if so, why? Because I start off with the idea that *primâ facie* no person who is in control of trust funds is entitled to lend those trust funds to himself without telling, at any rate, the person whose money it is. That is the sort of idea with which one starts off. If there are good business reasons why it should be permitted, that is a different matter; but I have not yet heard what those good business reasons are, and I want you to help me with your great experience.—It is difficult to give illustrations in cases which one has not come across; but one can quite conceive there may be cases where there would be no reason why it should not be done if the Articles of Association allow it.

Does not your view rather come to this, that you oppose legislation in this respect because, although it would do no harm in the great majority of cases, there may conceivably be cases where it would do harm? That is rather putting it the other way round from what you suggested just now, is it not? It would not be a case of legislating for the isolated case, but of legislating for the general case and sacrificing the isolated case for the general good? That is the way it rather strikes me from your last answer.—I should have thought that loans without security were only made in very exceptional cases, and if there is good reason for the money being lent I do not know why it should be shown. You see, with regard to loans to a director there are his colleagues, and he must get the authority of his co-directors. As long as they do their duty, and the Articles allow it, I do not see why they should not lend the money.

(Mr. Brand): Do you think if the directors wanted to do something wrong in this way it would be enough safeguard to say that the loan could be made only against security, without saying what kind of security? I suppose "security" can mean anything. I have known it to mean many different things.

(Sir James Martin): I was going to ask how you would define it.

(Mr. Stiebel): In one case it was held to be the security of the company's own shares.

(The Chairman): May I remove a misapprehension in the mind of the witness which may be also in the minds of some members of the Committee? My question was not directed exclusively or principally to cases of fraud, but to the class of case which commonly happens, of money being advanced in this way to a director who is a perfectly honest man and who is thought to be perfectly solvent and in good credit, but it turns out afterwards that he is not. I am not talking about fraud, because no one can legislate against fraud. The cases I had in mind were cases where the thing was honest and the credit was thought to be good, but it turned out that it was not. However, I will not pursue it further. Mr. Pears has stuck to his guns most gallantly, if I may say so. Now, if I may proceed with this, I see that the Council wish to impose an obligation to keep books of account. Do I take it from the form in which this answer is put that they do not wish to attempt to specify in an Act of Parliament what those books of account should be?—Yes; it is impossible.

But merely that they should keep proper books of account, having regard to the kind of business in which they are engaged?—Yes. It is impossible to specify by Act of Parliament what kind of books should be kept by every company.

Then under the next heading I am very much interested in the view the Council take: "In many cases want of common business care by the creditor is the chief cause of his loss." The Council in general, I take it, hold the view that the information available, if creditors choose to avail themselves of it, is really satisfactory?—Yes.

Now paragraph 6. I am purposely taking you shortly over many of these things because other members of the Committee are very much more qualified than I am to deal with them. Under paragraph 6 you deal with the question of holding companies. It is becoming the practice now among holding companies to give more information than they used to give in the past to their shareholders—do you know?—I have not noticed it. I think some are going to give more details. I have heard that.

Do you think that they should publish a consolidated balance-sheet?—If a consolidated balance-sheet means putting into the holding company's balance-sheet all the assets of every company in which it has got shares, and all the liabilities, it seems to me that the balance-sheet is entirely wrong.

I was not meaning in substitution for the legal balance-sheet; but in some cases they do it in addition to that. Is that a practice which is growing at all?—I have not had any experience of its growing.

What is the practice in the case of holding companies? Is it the practice always to have the same auditors for the subsidiaries as for the parent company itself?—No; it varies. A holding company may have a subsidiary company carrying on business on the other side of the world.

Take the case where an auditor is auditing the accounts of the parent company and he finds in those accounts an item representing the shares in subsidiaries. That may be taken in at cost, may it not?—Yes.

Or it may be that it is taken in at some figure different from cost?—Yes; but usually cost.

Now, if it is taken in at cost, as a matter of accounting practice is anything said on the balance-sheet, or on the report, or on the certificate, in a case where the shares in

the subsidiaries are not worth cost—is any provision for depreciation brought in, or anything of that kind?—It is the common practice to report as to the value, or that the auditor is not in a position to value or state what the value of the subsidiary companies is, and leave it to the directors—get the directors in their report to express some opinion.

Is that the practice? Does it not frequently happen that all the shareholder gets is an item in the balance-sheet: "Shares in subsidiaries at cost," and they are simply left with no further information as to what the real value of the shares is?—I should not like to say what the general practice is with regard to that. I know what our practice is; but as to what other auditors may do, it may be that in many cases they would leave it at cost without any comment; but I should have thought that the majority of them would have commented on the value.

(Mr. Wilton): If you know that the values have seriously depreciated, what would they do in that particular case?—That all depends. Taking the companies as a whole, some may have depreciated; but on the other hand, some may have appreciated.

I am taking the case of a serious depreciation all over—taking all that into account.—A serious depreciation in the aggregate?

Yes; so serious that it ought to be mentioned by the directors.—I should have thought in that case the auditors would have reported it.

What would the auditor have before him? Is it the practice of auditors, in auditing the accounts of a holding company, to call for the accounts of the subsidiaries and to examine them?—Yes—see them, certainly.

Supposing they find from the accounts of the subsidiaries that the shares in those subsidiaries are not worth anything like cost, or par—whatever the figure is—would it be their duty to refer to that in the balance-sheet of the holding company—in their report?—Yes, I think it would, just the same as any other company which was not a holding company. If there is any question about the assets being considerably below the figure at which they are entered, they would report it.

(Mr. Stiebel): Do you see the accounts of the subsidiaries, or only the balance-sheet and profit and loss account?—The audited accounts—the latest ones that would be available.

(The Chairman): I was rather thinking of the case where the auditor of the parent company was not necessarily the same as the auditor of the subsidiary, so that he could not say from his own audit whether the subsidiary's balance-sheet was right, but merely took the figures at their face value.—He would want to see evidence that proper figures were brought in with regard to the subsidiaries—the latest available accounts.

(Sir William McLintock): The point you are particularly concerned with is the trading result of the subsidiary, is it not?—Yes; take the accounts of the company as a whole.

Let us assume the case of a holding company which acquires all the share capital of a subsidiary at a price which represents a very substantial sum for goodwill. You are then presented with a balance-sheet of that subsidiary company and the entries appearing in that balance-sheet have no relation whatever to the value which appears in the holding companies' books?—Yes.

Is not that quite common?—I do not know that it is quite common, but it may occur. I should not have thought it was quite common. But you are referring now, I take it, to one subsidiary company—it may be one out of many—and that one subsidiary company may be worth less, taken as a whole, than the figure at which it stands. But there may be other subsidiary companies which have greatly appreciated and are worth a great deal more than the figures at which they are entered. It becomes necessary, therefore, to deal with them in the aggregate.

I am not suggesting it was worth less than was paid for it. But what is there in the subsidiary company's balance-sheet, the subsidiary having no concern with the price paid for its shares, which would reveal to an auditor the real value of those shares, other than the cost paid by the holding company?—That depends upon what is shown in the accounts. If you see the accounts for two or three years and you know what profit and loss it is making, you would be able to form some opinion, would you not? Quite apart from what a particular balance-sheet showed, you would see what business the company had done and what the nature of the business was.

My real point is this, that in regard to any subsidiary company whose accounts have not been brought into line with the price paid for their shares, all the auditor is concerned with and can really express any opinion on is the trading result—whether since the date they were acquired they have made a profit or a loss?—I do not know that I should limit it to that. It is always our practice, and I suppose it is the practice of a great many others, to call upon the directors to express an opinion as to the value of the shares in the subsidiary companies; and if they are satisfied that that is correct I would not qualify it. But, on the other hand, there may be cases where the holdings in subsidiaries are so large and so varied that no auditor could possibly be able to value those holdings and get the directors to express their opinion and get them in their balance-sheet to refer to their report.

It comes down to this, that so long as the subsidiary is not making a loss, the entry which appears in the holding company's balance-sheet, that the shares of that subsidiary have been valued at cost, is allowed to remain unqualified?—That would be the ordinary practice, I think.

And it is quite common in holding companies to-day to find one auditor for the holding company and a variety of auditors for the subsidiaries?—I do not know about a variety; it depends where the subsidiaries are situated. If they are spread over the world, necessarily there must be different auditors; but if they are near the holding company I should think it is more the practice for the auditors of the holding company, in cases which have been mentioned where the holding company hold the whole of the capital of the subsidiary, to have the auditing of the subsidiary companies.

I was not referring to companies outside the United Kingdom. But it is quite common, is it not, for companies carrying on business in this country?—Subsidiaries carrying on business in this country?

Yes. In fact that is commoner than the other way—to have one auditor for the whole group?—I do not know. It all depends on how the holding company has acquired its interest in the subsidiary companies. I should have thought the more general practice was that when a company is acquired by another company, for the company which acquires the other one to appoint its own auditor in the place of the other auditor.

It may be a very desirable practice, but I suggest it is not by any means the common practice to-day.—Yes I should have thought it was. Not infrequently where we have been auditing a company which has been amalgamated with another we have lost the audit. We have lost several banks in that way. The company acquiring puts in its own auditor, and very naturally. We do not complain when it happens, but of course we do not like it.

I am not suggesting any complaint at all. I am talking about the practice.

But where you have a holding company with one auditor and a group of subsidiaries with different auditors, it is a matter of difficulty for the auditor of the holding company to form any reliable view as to the value of the investments other than is reflected by whether the subsidiary is making a profit or a loss?—I do not know that it is limited to that. As I said just now, I think he would take the whole of the circumstances into consideration, if he expressed an opinion at all. But it is very difficult. Auditors, we always contend, are not valuers, and that it is not our business to value. If it is a question of valuing assets, that is not the duty of an auditor. Shares held by holding companies in subsidiaries, as far as the valuation of them is concerned, is not a matter for the auditor; he should be satisfied that those who are capable of forming an opinion do to the best of their ability express their opinion in the accounts which they put forward for audit—either by minute or by their report to the shareholders.

(The Chairman): Of course at present the auditors, whether they like it or not, have to a certain extent to stand in the position of valuers, do they not?—They are able to some extent to form an opinion, and they do; but they are not in a position really to deal with many subsidiary companies far away, where the potential circumstances have to be taken into account, as the directors of the holding company are who have got the whole of the business from day to day throughout the year at their fingers' ends.

You might have a subsidiary which was even running at a loss, yet as a business proposition the shares might be worth—— Might be worth more than they were entered at in the balance-sheet.

Would you see any useful purpose in saying that where the balance-sheet of a company includes an item for shares in subsidiaries the directors should be put under an obligation to certify that the balance-sheet figure for those shares is, in their opinion, a fair estimate of the value of them? At present there is no obligation whatever to do that; they are simply put in at cost and nothing is said. Is there any objection to saying that the directors should be required to certify that in their opinion that is a fair valuation—the balance-sheet figure?—A statement that the assets in the balance-sheet are of the value at which they are entered.

Take a case where shares in subsidiaries are put in and described as value at cost. Is there any objection to making the directors certify that the cost figure is really, in their opinion, a fair value of them?—In the aggregate?

Yes. Because it means nothing by itself; it is simply a statement that they have paid so much, and the things in practice may be a pure fiction really. Why should not they say? If they choose to pin themselves to that figure in the balance-sheet why should they not be bound to certify that in their opinion that is a fair value to put upon them?—I should not prefer any legislation to that effect personally; but, as a matter of practice, we always see that that is done.

(The Chairman): I want to see whether there would be any objection to making that compulsory.

(Sir James Martin): Surely, when you come to the question of value, the fair value should only be the price value to the holding company?—Yes.

(Sir James Martin): It might not be an intrinsic value at all.

(The Chairman): In the holding company's balance-sheet it is the fair value to them, of course. I do not mean the sale value. The kind of case I am thinking of is where the shares in the holding company appear year after year at cost, although everyone concerned in the company knows they are not worth anything like the figure. In such cases, if the directors were compelled to certify that there would be no difficulty in doing so. They would have to write them down. I want to get your views about it.—I prefer not to give a general view. Each case must be considered on its merits.

(Mr. Cash): Supposing we amended the Chairman's illustrations and linked it up with what I thought was in Sir William McLintock's mind, namely, that the asset value in the balance-sheet is diminished by trading losses. Do you see any objection to the directors making a statement that the trading losses of the subsidiary companies had or had not been provided for?—No, I do not see any reason why they should not state whether they have been provided for or not; but there may be good reasons in many cases for not providing for them.

(Mr. Stiebel): They could give those reasons?—Yes. That is what has happened in the last few days in regard to a company for which we act. They have made a distinct statement that one of the subsidiaries has made a loss which has been carried forward. I do not see any objection to that. As far as the auditors are concerned, it would be very much better for them to do it; it would put less responsibility on the back of the auditors. But I am very much against legislation where it can be avoided, because we know now to some extent where we are; but the moment you begin to alter it we have to have test cases to know where we are. Of course, it is a very nice thing for the legal profession.

(The Chairman): But we have still to debate it all round to see whether it would be desirable or necessary to have all the companies tightened up to the standard of people doing the right thing.—To the general good of everyone?

Yes. Because you tell us some are doing the right thing; and if those companies find no difficulty in doing it, and it is the right and proper thing to do . . . .—But the circumstances vary to such an extent. That is the difficulty of bringing in legislation. Businesses are carried on under such different circumstances, and the subsidiary companies exist under such different circumstances; they carry on business in such different places and are so scattered that it is difficult to legislate in a way which would be beneficial all round without being harmful, and, in fact, in some cases doing more harm than good.

(Mr. Harold Brown): Do you see any logical reason in insisting on the directors of a holding company giving a certificate as to the value of the shares, and the directors of a company which owns works and machinery giving their idea of the value of the works and machinery? Do you see any logical distinction between the two?—No.

Why should the Legislature say that the directors of that concern should certify the value of that more than the directors of any company should certify the value of that?—No, I see no distinction.

(Mr. Cash): That is, as distinct from the statement as to trading losses?

(Mr. Harold Brown): Yes, entirely.

(Witness): That is on valuation.

(The Chairman): Do any other members of the Committee want to take up this interesting question?

(Mr. Cash): I want to follow up one thing that was said about the position of auditors. I understood you to say that the view of the Institute is that a consolidated balance-sheet should not be made a statutory document. But would you be in favour of certain suggestions where companies voluntarily issue a consolidated balance-sheet, to define how that balance-sheet should be made up and stating how the trading results, for example, have been dealt with? For instance, on the

question of auditors there has been a suggestion made in another place where a consolidated statement of assets and liabilities is issued—not obligatory but optional—the auditor must in addition to his ordinary certificate state in his report appended thereto that he has audited the balance-sheet and accounts of any company or companies whose assets or liabilities are incorporated therein, or that they have been certified by independent auditors. Further, in the case of an auditor of any company qualifying his report, a reference to the qualifications must be attached to the report appended to the consolidated statement. That would throw the obligation on the auditor of the holding company to refer to it in a balance-sheet where a voluntary consolidated balance-sheet was published.

(Mr. Harold Brown): Do you make it a statutory requirement that all qualifications on the subsidiary companies' balance-sheet must be incorporated——

(The Chairman): May we have the witness's answer first?

(Mr. Cash): I want to know whether that would be of any assistance so as to make that class of certificate applicable to a consolidated balance-sheet which is published at the option of the company and its directors and shareholders.—(Witness): I do not follow what you mean. Do you mean, where the holding company issues the balance-sheet, incorporating the assets and liabilities of the subsidiaries?

Yes. Then that the auditor should state either that he has audited the subsidiary companies, or that they have been independently audited, and he should deal with any qualifications in regard to the auditing of the subsidiaries in the holding company's balance-sheet.—I should think that, as a matter of course, he would have regard to the audited accounts, which are incorporated and audited by other Chartered Accountants, just the same as one refers in a report to companies who are not holding companies having audited the accounts and the books and returns from abroad certified by local agents—whatever it is. Of course, if accounts are incorporated which are qualified by the auditor (whoever he is), that qualification should certainly be as a qualification for the holding company's certificate.

If you say that would be a useful practice, and certainly it should be done, then, of course, the learned Chairman's point comes in that you are legislating for something to which there is no objection, but at the same time possibly strengthening the hands of certain people.—You are legislating for something which does not appear to be necessary if it is the general practice. It comes very difficult to know what an auditor is to do; because if you take a holding company which has 100 subsidiary companies and each subsidiary company has got a qualification, are you to put 100 qualifications on the holding company's certificate? If you have to legislate for a holding company which has three subsidiary companies, it equally applies to a holding company with 100 subsidiaries. I know you have already had a gentleman here representing a holding company having to do with over 200 subsidiaries; if each subsidiary had to have a qualification and every qualification were put on the holding company's certificate, you would need to write a book on it.

(Mr. Cash): The witness rather led us to suppose that was the general practice, and the particular case in which he was concerned his holding company did provide in the aggregate for the losses and/or profits in all the subsidiary companies.

(Sir William McLintock): Take a very simple example. You have a holding company having bought the shares of another one, and they determine the price of that other company by reason of the value placed on its plant and machinery—say, it is some substantial sum. In the books of the subsidiary company the plant and machinery appears at a nominal figure. The auditor of that company is content to pass a modest depreciation on the book value that is in front of him, but it is not an adequate allowance so far as the holding company is concerned, having regard to the price they paid; and the auditor of the subsidiary company makes no comment in his docket of any kind. He is not entitled to, and he is not concerned with, the holding company. Does not that case call for some remedy?—I should have thought not.

It is not uncommon.—If you once begin to qualify by legislation I do not know where it is going to end. You have to decide as to whether a company writes off depreciation or not, and the extent of that depreciation, which is the matter you have raised. It is quite possible that the subsidiary company may have written off in past years an excessive depreciation—more than was necessary. It may have a year when it does not do so well, and it may write off no depreciation. Are you, for the purpose of bringing profit or loss into the holding company's accounts, to decide whether or not that profit or loss, whatever it is—that result—is after charging what it has not charged, or will you accept the figure?

I suppose that the holding company, before dealing with the profits of the subsidiary companies for dividend purposes of its own, should have regard to the price that was paid for the plant as reflected in the price paid for its shares, which appears as an asset in its balance-sheet?—To do that you have to find out and decide what no Court of Law has done—that is, what is the profit of a company?

Supposing you know that the shares have been bought on the basis that the plant is worth £500,000, and in the subsidiary company's books it is standing at £50,000, and they write 10 per cent. off it. Surely that is a factor which the holding company's auditor ought to take into consideration, or the directors of the holding company, before distributing all that company's profits to the shareholders in the holding company?—Yes, I agree it should be taken into account; but there are other circumstances which should be or which ought to be taken into account, which other circumstances counteract that. If you are going to say what must be done in all circumstances you will get into a state where no one will be able to carry on business at all. No one will take on the auditorship of a holding company if you legislate to that extent, because they will not know where they are.

That is only one matter. But do you suggest that this and similar matters receive due attention?—I should have thought they did in most cases. My experience is that companies are conducted honestly and on ordinary business lines. Of course, you may be able to legislate for some things. If you are going by legislation to hamper the businesses which are carried on honourably and successfully by more restrictions put upon the carrying on of businesses, the less successful are businesses likely to be.

(Mr. Cash): Do you think it would be of any assistance to make it obligatory to state in the balance-sheet of holding companies separately their interests in subsidiary companies?—I think it would be a very good thing if they did. We almost invariably have that done. I do not see any harm in that.

(Sir James Martin): In detail?—No, in one item.

(Mr. Cash): And distinguishing share holdings from loans?—No, I do not see any reason why they should do that.

If there were legislation in that direction, would it be necessary to define what is a subsidiary company?—I think it would be.

And if it were necessary to define it, can you suggest how you would define it?—No.

Would it be a bare majority of the voting power or a bare majority of the ordinary capital, or of the ordinary and the preference capital?—That is where the difficulty begins. You see, you may have interests in subsidiary companies—you may have all the ordinary shares and no preference shares; you may have part of the ordinary shares—you may have over 50 per cent., say 51 per cent., of the ordinary shares, and no preference shares. My answer is that I do not see any objection to it if it can be properly or reasonably done; but that is where the difficulty begins, I think.

(SIR JAMES MARTIN): That is what I have been wondering about all through—what is a controlled company?—That is very difficult to define, because the voting power varies in different companies. In some cases the preference shareholders have no voting power, or practically none—the ordinary shareholders have all the voting power. On the other hand——

(Mr. CASH): Do you think the commercial world has got so far as to say that the mere use of the words "controlled company" is sufficient without any attempt at any more definite definition?—I should not like to commit myself on anything with regard to what the public may think.

(Mr. STIEBEL): Do you think there ought to be legislation to require a holding company to show its holdings in subsidiary companies as a separate item?—No, I do not suggest it should do it. But personally I do not see any objection to it. However, I think it is more desirable that they should not legislate.

(Mr. HAROLD BROWN): I understand your point of view is that you agree with a great number of these suggestions which have been put to you as to the way in which holding companies' balance-sheets should be prepared and as to the form of the auditors' certificate, and so on—as being highly des rable—that you do not consider they are suitable matter for legislation?—Yes, that is putting it very shortly, I think. And in many cases they are being done.

(The CHAIRMAN): And as a matter of business it is a good thing to do that?—Yes.

Now, one point on page 8. I want to ask you what the practice of auditors is with regard to the inspection of securities. Take Stock Exchange securities—the practice, I suppose, is to have the securities produced to them, is it not?—For registered securities.

Bearer securities are usually held by the banks?—Yes, and then certificates are obtained from the banks—certificates are also obtained for inscribed stocks.

Is it the general practice for auditors to take certificates from anyone but recognised banks?—In special circumstances it may be done. It depends on what is happening at the date of the accounts.

Normally, would it be the practice of the auditor to take the certificate of a firm of brokers, or something of that kind?—He may in certain circumstances have to take it. You may have purchased shares on which the certificates have not come in in the course of being carried through, and it is usual for an auditor to get some evidence that these shares are in course of being transferred to the company.

Do you consider that it is quite sufficient to leave each case to be decided on its own merits—in fact, is it not better to leave each case to be decided on its own merits?—Yes.

Without attempting to lay down any general rule about it?—Yes.

The last thing I want to put to you is on the question of private companies, right at the end. I notice a suggestion on page 12, about which I should like you to tell us something; because in the case of a private company you are going to prohibit the leaving of purchase money on the security of a debenture except on the terms that the debenture holder shall be under some liability to previous creditors. But, you see, you are dealing there with a case where there has been what we call a novation; because if you have got a creditor of a man who is trading as an individual, and he just turns his business into a company, the creditor will remain the creditor of the individual unless he novates—that is, he elects to take the liability of the company in place of the liability of the individual.—Yes.

What you are suggesting here is this, is it not: that where a creditor has elected to give up the liability of the individual and to take in its place the liability of the new company, you are going to put him in the privileged position of being entitled to have certain rights against the original debtor. That is the effect of it, is it not?—Is it exactly that? It is rather that the original debtor should not escape liability by turning himself into a company and taking a debenture on all the assets.

He does not escape it now.—Not if he does not novate.

He has personal liability now unless his creditor novates, and there is nothing to make him novate if he does not want to?—No; but it was rather to guard against those cases where a vendor disposes of his property and then takes a debenture and cuts everyone out.

He does not cut out the creditors?—No, not without the consent of the creditors.

Novation is contract. If they novate it meaas that they contract to give up the liability of the individual and take over the liability of the company instead. If they contract to do that, why should the law step in and say, "Although you have contracted to do it you shall not do it"?—I looked at it rather from the point of view of dealing with those cases where a vendor disposes of his business to a company and then gets a debenture which puts his hand on all the assets.

If there is a creditor who has not novated, he can still sue the debenture holder.—Yes; but if he has novated on the footing that the vendor has got a debenture he has no cause for complaint.

Yes; a man who novates into a company which has issued a debenture is surely putting his head in the lion's mouth.—Yes.

Is not that one of the cases where the want of common business care by the creditor is the chief cause of his loss—as you said earlier in your Memorandum?—Yes, I am afraid that would be so.

(Mr. HAROLD BROWN): Cannot you novate almost without knowing you are doing it?

(Mr. STIEBEL): Is not the real hardship on the creditors of the company in those cases, and not on the creditors of the individual?—I was going a great deal further than that myself, but the Council struck it out. I was going to make a vendor who carried on business with other people's money on the footing that he had a debenture, pay for the new creditors as well.

(Mr. WILTON): In other words, you think a claim for the price of the business should be postponed to any creditors at the date of the conversion if they are not paid?—And for the new creditors incurred, because if he takes the goods from other people knowing he has a debenture——

(Mr. STIEBEL): Would it not be very difficult to limit these things to private companies; because anyone could easily turn himself into a one-man public company?—Yes.

That is the difficulty I feel in dealing with private companies separately.—Yes.

(The Chairman); Do not people who deal with private companies look upon it as an ordinary business risk to take a certain amount of risk of that kind, and really do not take the trouble to make much investigation?—Yes, I think that is so.

(Mr. Eddison): You say on page 10: "The Council suggest that the meeting of creditors and contributories of the company to be called under sect. 152 should be called within 21 days of the winding up order"?—Yes.

That is provided for at present under the Rules, is it not, subject to the Court giving an extension?—I was not aware of that. I was going by the Act of Parliament.

In practice the meeting is not held within the 21 days, but I suggest to you that that is because it is impracticable; because the Official Receiver cannot get the statement of affairs and his list of creditors ready in time; also the books of the company are not written up in many cases?—The feeling of the Council was that if in a voluntary liquidation the liquidator has to call a meeting within 21 days, why should not the Official Receiver do so? Under the Act of Parliament the Official Receiver has to call a meeting, but there is no date specified, and therefore he goes on and on and on, and he deals with the estate and gets it all in, and by the time he has got his meeting there is nothing to get in, and it does not interest anyone. That was the feeling of the Council; but I have no personal experience of it.

I think the Official Receiver takes what steps he can to expedite things, and it is not practicable to do it within 21 days?—There is no reason why he should not have the meeting; but possibly he could not submit a statement of affairs.

Is it much use having a meeting if you have not a statement of affairs? It may affect the decision of the creditors. You have not even got your full list of creditors?—As a general rule I should have thought he would have known who the creditors were. There may be exceptions, of course, but in preparing the statement of affairs you have a good deal more to do that to prepare a list of creditors? In the old cases of liquidation by arrangement we used within a short time to send a list of creditors and called a meeting of hundreds of creditors, and you got the creditors there. They may not all have notice, because you might not know who they are, but the bulk of the creditors must be known to the Official Receiver, and I should have thought there was no reason why he could not have a meeting to take their views.

They have to decide what liquidator they want. Is it not desirable that they should have all the information on the table before they come to that decision?—I should have thought not, any more than in a voluntary case. In a voluntary case you have to have a meeting for the creditors to decide what they will do; and if in a voluntary case you are obliged to have a meeting, why not in a compulsory case?

That is under sect. 188?—Yes.

(Sir William McLintock): In these voluntary meetings it is not the practice to submit a statement of affairs owing to the lack of time?—No.

When the creditors are summoned to a meeting they want to know the position of affairs. They do not appreciate sect. 188 when it is read to them?—They express their opinion as to whether they will continue with the voluntary liquidator who has been appointed by the shareholders, or not. They are perfectly capable of doing that on a voluntary liquidation within 21 days; why should not they in a compulsory liquidation say whether the liquidator should administer it or someone else do it? There were serious remarks made by the Council about the way in which these things were conducted and the delay there was in calling the meeting. If you wait until you have a statement of affairs you might wait for months. In fact, we were instructed to help the directors in the City Equitable, but, as a matter of fact, we never completed it; they had to have a meeting without it, even months and months afterwards.

(Mr. Eddison): There are cases, of course, where you do not get a statement of affairs at all?—Yes.

I should have thought if you were going to have a statement of affairs that it was desirable to have it, or the substance of it, before you had your meeting?—I am expressing the views of the members of the Council who consider these notes, and there was a very strong feeling as to the meeting being called within a reasonable time—perhaps limited to a month instead of 21 days—instead of leaving it at the option of the Official Receiver to call it just when he chooses to do so.

Has he not to get the sanction of the Court under Rule 115?—There is nothing in the section about it.

That is so?—I was working on the section.

(Mr. Cash): Am I right in saying that in bankruptcy you do not have to wait for your statement of affairs before you have a meeting of creditors?—Yes, I think so. In bankruptcy, I believe, the Official Receiver calls the meeting, and you have to be ready by the time he calls it.

(Sir William McLintock): There is this distinction between a voluntary liquidation meeting and a creditors' meeting, that there is no one in the saddle as representing them; the creditors alone in the bankruptcy proceedings have a voice as to who should administer these things.

(Mr. Cash): It was only as to finding out who the creditors are; you have people tendering proofs which may not be admitted.—All the creditors may not have notice of the first meeting, because they may not be known; but I believe that in bankruptcy under certain circumstances they adjourn the first meeting if necessary.

Now on sect. 81 with regard to prospectuses. Would you see any advantage or disadvantage in including a provision that it should contain a statement as to past profits of any existing business over, say, a limited period?—I see no reason for insisting that that should be done—for making it obligatory to put it in the prospectus.

There have been a number of cases of companies floated without that information where the information would have been of material assistance. I suppose you will agree to that. Do you think it would be an embarrassment to make it an obligation?—I myself think it is best to leave the section as it is.

Do you think it would be any embarrassment to add such a provision?—I think it might be in certain circumstances.

In almost every reputable prospectus where a business is being acquired you would expect to find a statement of profits certified?—Yes, if a company is being formed to acquire the business which has been carried on it would be unusual not to put in a certificate as to the profits; and I should have thought the absence of it would have been enough to draw the attention of people to the omission.

I see there are two new suggestions here. On page 8, for example, it is stated that "no firm or partner in a firm should be auditor of a public company of which a member of that firm is a director"; and also that accountants when giving certificates of profits and balance-sheets should state their professional qualifications, if any. Then there is also a suggestion with regard to limiting the indemnity of auditors?—There was a very strong feeling at the Council with regard to the procedure. I am not sure that it really comes under the inquiries that this Committee was making, however.

(The Chairman): There are a number of suggestions made, especially in debenture holders' actions, and some of them

have been put in before us from another quarter. We are seised of them and I did not put any questions to you on it: because we have had representations from one or two about it?—The questions with regard to a debenture is a very important one, of course.

(Sir James Martin): With regard to the obligation to keep books. I see that the Institute recommend there should be an obligation to keep books of account?—Yes, there is nothing in the Act which requires it at the moment.

I agree, and it is a very good recommendation; but do you think you could take it a little further. The Bankruptcy Committee of the Board of Trade reported unanimously that the law should define the books to be kept by a trader?—Yes. They went a long way and said they must keep books which would trace stocks, because of the frauds committed by foreigners who traded in this country.

The frauds which have been committed since the conclusion of the war have been very vast?—Yes.

Do you think we might go a bit further and attempt to prevent any of these people, if they are stopped by a new Bankruptcy Act, from taking refuge under the Limited Liability Act in order to carry on their business?—I think the Chairman put that question to me, as to whether it would be desirable to specify what books should be kept, and my opinion is that it is impossible to define what books should be kept.

You find it too difficult?—Much too difficult. The businesses are so varied.

But anyhow, the books to be kept should generally disclose the financial operations of every company?—Yes.

That should be laid down by a Statute?—Yes. I do not know whether putting in the words "proper books of account" would deal with that—the wording might be amplified a little, perhaps; but without specifying exactly what the books are which should be kept. I do not know that it comes into this, but there is a strong feeling that undischarged bankrupts should not be directors of companies; there is nothing directly in these notes about it.

Personally I should be glad to have that answer from you on the notes?—The difficulty of it is that an undischarged bankrupt would probably not try to be a director himself, but would be represented by a member of his family; and it is so far reaching that it is difficult to carry out.

(Mr. Stiebel): Could not you get that under a wide definition of "directors"?—It would be rather difficult.

(Sir James Martin): May I deal with another matter, which Mr. Cash has already referred to? You say, "The Council suggest that when certificates of profits and balance-sheets are signed by accountants, their professional qualifications, if any, should be stated"?—Yes.

The professional qualification of an accountant is a personal matter, it attaches to an individual, does it not?—Yes; but firms are described, are they not?

That is the point I am coming to. There are a large number of firms—in fact, I can say from my own knowledge there are over 150 firms in Great Britain—who are composed partly of Chartered Accountants and partly of Incorporated Accountants. What description are they to put after their names?—Most accountants when they sign a balance-sheet as auditors put their qualifications, do they not? I do not know whether they say "Chartered Accountants" or "Incorporated Accountants."

I am referring to firms which consist partly of the one and partly of the other?—I do not know how they do describe themselves.

(Sir James Martin): This is a recommendation to put something into a statute, so I want to know how it is to be done.

(Sir William McLintock): If Sir James Martin and I were partners in a firm we could not describe ourselves as Chartered Accountants if we had to sign a certificate?—How do you describe yourself?

(Sir James Martin): My own firm signs "Incorporated Accountants," because although some partners are Chartered Accountants, all are Incorporated Accountants, and so we sign. But I know that there are 150 firms in this country which are composed partly of Chartered Accountants and partly of Incorporated Accountants, and they can sign neither the one way nor the other, because the qualification is individual. Now, would not it be better to adopt the recommendation of two of the great representative trade organisations that the auditor of every company should be a Chartered Accountant or an Incorporated Accountant, for public companies, at least?—I have not the slightest objection to that. That was considered by the Committee in 1918——

Pardon me; it was not before the Committee of 1918. I know, because I happened to have sat on it?—I was under the impression that it was. But the idea of putting this in was to shut out from signing people who had no qualifications at all. That was the object.

I understand. But I want to put to you the difficulty of a very large number of people whom you desire to help?—The matter was considered and it was put in this way because it was thought that if it were suggested in the Bill that the auditor should be a Chartered Accountant or an Incorporated Accountant, leaving it to those two bodies, there would be such opposition that it would not get in the Act of Parliament at all, and therefore it was better to say that if there is a qualification the qualification should be shown. But if it could be put in the way you suggest I am sure the Council would thoroughly approve of it.

Of course, you are aware that there are a number of statutes going through Parliament every year in connection with local government which prescribes the qualifications of auditors?—Yes. But do they limit them to Chartered Accountants and Incorporated Accountants? I thought that was not quite so. The only reason for putting it in this way was to avoid the opposition which was likely to arise by specially mentioning any particular body. But if the two bodies could be put in, by all means do so if it is in the least likely to be successful.

(Mr. Stiebel): There was one answer you gave to the Chairman about which I want to ask you. He asked you whether you accepted the recommendations of the Wrenbury Committee as to the issue of shares at a discount, and I think you said, Yes?—Yes.

By that, do you mean that you adopt the limits he puts on the issue of shares?—I do not see any objection to the limits put on.

The Council does not suggest an indefinite limit?—Personally, I do not see any objection; but they want and have said it should not be more than 50 per cent., as a matter of fact, I think they said it depended on the market value of the shares what the discount should be.

It would depend on various things; there are two or three things?—Yes.

Then with regard to the registration of mortgages——?—Being kept at the registered office?

No, that is not the point. I want to know whether you wanted an extension of registration in any respect?—No, I do not think we do. Is the point as to what should be registered?

Yes. Patents, and all that sort of thing, are they still to be outside sect. 93?—Yes. I think we can safely leave it as it is. What we are afraid of is that something will be done which will prevent warrants, shipping documents, and so on ——

(Mr. Wilton): Negotiable documents?—Yes—you would never be able to carry on business.

(Mr. Stiebel): You limit it in a certain way by saying certain documents should not be included. That is why I asked the question?—Yes, I do not think it matters about the others at all.

Now about divisible profits. There you do not want a definition of what profits are divisible?—Certainly not. What the law will not define—

I should have thought the present vague state of the law put the auditors in extreme difficulty?—No, I do not think so. It depends on what you call "divisible profits"; because we have been advised over and over again that if a company makes a profit on its trading it can divide some of the trading profit althongh there is a loss on the profit and loss account.

(Mr. Wilton): Do you think it is a proper thing for a company to do—to pay a dividend out of the present profits when there is absolutely a debit on profit and loss?—It is another difficulty if you legislate. It may be that, although there is a debit balance in the profit and loss account, your assets may be worth a great deal more than that debit balance.

Is that any excuse when dealing with profits?—I think it is something which has to be taken into account. Of course, if you carry it too far you can go and say, "All I have to do is to register another company, sell it to the new company at a higher figure, and I get rid of my debit balance on profit and loss, and distribute the profits." That would be more beneficial to the Revenue, of course.

(Sir William McLintock): One question on divisible profits. Say a holding company have bought the shares of a subsidiary company which has a large accumulation of profits in the business, and after the date of purchase they decide to draw a dividend from those accumulated profits for which they have paid. Would you suggest that that dividend so obtained is available for division by the holding company as profits or is to be applied in reduction of the capital value of the shares?—I should not think, speaking generally, it should be applied to dividends, but there may be special reasons in connection with the purchase where it might have to be used from a different standard. But generally speaking, I agree it should not.

It should be applied in reduction of the share value?—Yes, that is the ordinary process.

(Mr. Stiebel): I want to ask you a question about 10 (i), where you say: "A liquidator who carries on the business of a company which is in liquidation should be obliged to use the words 'in liquidation' after the name of the company." Does not that apply *a fortiori* to a receiver carrying on the business, that he should say, "in receivership"?

(The Chairman): If you were carrying on the business?

(Witness): As I understand it, a receiver appointed under the Conveyancing Act is still the agent of the company.

(Mr. Stiebel): That is my point?—And a receiver appointed by the Court is an officer of the Court. The circumstances are totally different. A receiver appointed under the Conveyancing Act is not a receiver carrying on business; it is really a company carrying on business.

But say a creditor orders goods; if it turns out to be a bad purchase he can only sue the company, and the debenture holder steps in and takes the assets. On the other hand, under a receivership of the Court or a liquidation the creditor who has traded with the liquidator or receiver has priority over the creditors in liquidation?—Yes; but in practice if the receiver is carrying on the business, does not the creditor require an order signed by the receiver? If he does so trade he knows the risk he is running, and if he is a wise man he will go to the receiver and say: "I shall not supply you with these goods unless you pay me." I agree it may be a hard case if he has not done that; he may supply goods while the company is being carried on under the receivership, and then he will not get paid for what he has supplied and the debenture holder gets the benefit of those goods; but that is because he has not taken the trouble to find out whom he is supplying.

Often it is impossible to do that?—Someone has signed the order.

It may be that the receiver and the director are the same man?—I should think there are few cases where a company carries on with the receiver where the creditor does not know that the receiver is there; and if he does not it is for him to find out.

You would not apply this to receiverships—putting in "in receivership," or some such words as those?—No, I should not.

With regard to debenture actions. I am sorry to think there is more delay on my side than on the other . . . ?—On your side?

On the companies winding up side, than in the Chancery matters?—I do not think that is intended to say there is more delay. The effect of what is said there is this—or at least this is the point we wanted to bring out: You have got a receiver appointed who is acting in the Chancery Division, and it goes on for a certain time, and then when a scheme has been thought out and passed by everyone the Master in the Chancery Division, or it may be the Judge - and then just before the final stages a petition is put on the file, and the result of that petition being put on the file for a winding up and a winding up order being made is that the proceedings automatically go to the Winding up Registrar, and then delay is caused because it has all to be done over again.

We practically always follow up a scheme like that as a matter of course unless there is any special reason to the contrary?—That was what was intended to be brought out—the delay caused by having to start *de novo* after the whole scheme for reconstruction had been approved.

Of course, it is very difficult to get the receivers and solicitors in such cases to get on with their actions. Then there is your point about the death of a person between certificate and further consideration?—Or transfer by sale.

Yes. In our Department we always have that proved on further consideration.—All done at the same time?

Yes.—That gets over the point.

Then with regard to this endorsement, not when it is a final payment but when instalments are paid, we always have the debenture endorsed in a debenture holder's action. Is not really the moral of a good deal of these debenture things that there ought to be rules saying what a receiver can do and cannot do?—Yes. What we suggest is that there should be uniformity of practice.

(Mr. Stiebel): And there is also the thing that a debenture holder's action is really a cumbrous form of procedure.

(Mr. Wilton): What is behind the suggestion that "no firm or partner in a firm should be auditor of a public company of which a member of that firm is a director"? Is it the independence of the auditor?—It is the question of the auditor auditing his own accounts, is it not? It is opposed to the spirit of the Act as at present.

Would not the principle extend to an auditor having any large holding of shares in the company whose accounts he is auditing, or his firm. Do auditors generally keep themselves entirely free in the matter of share holding in companies of which they are auditors?—I am not sure that I can express an opinion on that. As a matter of fact, I myself do not; I used to, but I gave it up; and I think it is much better that they do not. But as to whether they should not, it may be that a great many boards of companies might under certain circumstances be very upset if the auditors did not support them in any scheme they have got.

(Mr. Cash): The 1845 Act is the other way; you must be a shareholder?—Yes; but I do not think——

(Mr. Wilton): . . . there is much in that?—No. I cannot conceive any auditor having a holding in a company which would affect his position as auditor. And that is really all this comes to, I think.

(The Chairman): Thank you very much, Mr. Pears; we are very much indebted to you and to the Council.

Scottish Notes.

(FROM OUR CORRESPONDENT.)

Obituary.

We regret to have to record the deaths of two members of the Scottish Branch which took place last month. Mr. Whaley Hardie Young, of Stirling, was one of the members of the Scottish Institute of Accountants when that body became affiliated to the Society in 1899. Although of a quiet and retiring disposition, he took a keen interest at all times in the work of the Scottish Branch.—Mr. Archibald Sliman, of the firm of Sliman & Fisher, Incorporated Accountants, Glasgow, was well known, not only in professional circles in that city, but was also keenly interested at one time in athletic circles. He was for some time president of the Scottish Football Association, and also served on the Glasgow Town Council. Amongst his other recreations were yachting and golfing. Mr. Sliman, who was in his 67th year, is survived by his wife.

Aberdeen Harbour Treasurer.

Intimation was made last month of the impending retirement from the office of treasurer and collector to the Harbour Commissioners of Aberdeen of Mr. James A. Ross, F.S.A.A. Mr. Ross entered the service of the Aberdeen Harbour Board in 1887, and received his present appointment in 1892. The Finance Committee have recommended that, on Mr. Ross's retirement, he receive a pension of £500 per annum, and that for a year, from January 1st next, he act as a consultant and adviser to his successor.

Scottish Municipal Treasurers.

The quarterly meeting of the Scottish Branch of the Institute of Municipal Treasurers and Accountants was held at Perth on the 12th ult. Mr. D. M. Muir, F.S.A.A., Town Chamberlain of Dunfermline, presided, and a number of questions of importance to municipalities were under consideration, including a suggestion to revise the system of accounting and have it placed on a revenue and expenditure basis. Attention was also given to income tax as affecting municipalities, especially with regard to electricity profits, tax payable on profits from putting greens, &c.

Education Audits and Finance.

The annual report of the accountant of the Scottish Education Department for the year to Whitsunday, 1924, has been presented to that Department. The report is prepared from the accounts of the education authorities. Details are given of a number of points raised in the audits of various authorities, with the decision of the Department thereon. One of the items relates to the payment of the cost of arrangements for, and the provision of prizes at, an inter-schools sports meeting, and for printing in connection with a football competition organised in aid of a voluntary scheme for clothing destitute children. In this case the Department waived action on the distinct understanding that no further expenditure of a like nature would be met from the Education Fund. The total income as appearing in the audited accounts was £10,510,170, of which £5,583,896 was derived from grants from the Scottish Education Department and £4,532,550 from rating authorities, the balance being made up by school fees, &c. The expenditure was £10,761,772, of which £7,021,539 went in salaries and retiring allowances to teachers.

Notes on Legal Cases.

[The abbreviations at the end of each of the cases refer to the following law reports, where full reports of the case may be found. The Law Reports and other reports are cited with the year and the Division, *e.g.* (1925) 2 K.B.:—

T.L.R., *Times Law Reports*; *The Times*, *The Times* Newspaper; L.J., *Law Journal*; L.J.N., *Law Journal* Newspaper; L.T., *Law Times*; L.T.N., *Law Times* Newspaper; S.J., *Solicitors' Journal*; W.N., *Weekly Notes*; S.C., *Sessions Cases (Scotland)*; S.L.T., *Scottish Law Times*; I.L.T., *Irish Law Times*; J.P., *Justice of the Peace (England)*; L.G.R., *Knight's Local Government Reports*; B.& C.R., *Bankruptcy and Company Cases*.

COMPANY LAW.

Re Pennington & Owen.

Right of Liquidator to set-off Debt due to Company to and by Shareholder jointly with another.

The Court of Appeal allowed the appeal from a decision of Eve (J.), and held that on the winding up of a company the liquidator cannot set-off a claim, due to the company by a shareholder jointly with another, against a claim by the shareholder in his individual capacity of which the liquidator has admitted a proof.

(C.A.; (1925) 60 L.J.N., 739.)

REVENUE.

Re Bowen.

Bequest of Annuity free from Income Tax.

An annuity directed by will to be paid without any deductions free from income tax is payable clear of super tax.

(K.B.; (1925) 60 L.J.N., 705.)

Tudor & Onions v. Ducker.

Professional Accountant's Certificate Discredited.

A professional accountant audited the accounts of a firm for income tax purposes, whose certificate was offered in support of the firm's income tax return. The accountant had been discredited by the Revenue Authority and they refused to accept the amounts certified by him as correct. Additional assessments were made in respect of the years affected. The firm appealed, but produced no evidence except the accountant's certificate, admitting that the relevant account books had been destroyed. The General Commissioners having confirmed the assessment, the firm appealed on the ground that the existing accounts were *primâ facie* evidence in support of their appeal, which cast on the Surveyor the burden of proving his case. Rowlatt (J.) confirmed the decision of the General Commissioners and held that in the absence of evidence they were entitled to reject the accountant's certificate.

(K.B.; (1925) 69 S.J., 826.)